BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's Request for Authority to Implement A General Rate Increase for Electric Service	))))))	Case No. ER-2022-0129
In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement A General Rate Increase for Electric Service	))))))	Case No. ER-2022-0130

INITIAL BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

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Introduction

The Commission's *Order Setting Procedural Schedule, Denying Consolidation, and Granting a Variance* issued on March 16, 2022, requires that all "Briefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission." (Order Setting Procedural Schedule, Denying Consolidation, and Granting a Variance, pg. 7 ¶ 7(d), ER-2022-0129, EFIS Item No. 51; Order Setting Procedural Schedule, Denying Consolidation, and Granting a Variance, pg. 7 ¶ 7(d), ER-2022-0130, EFIS Item No. 58). Pursuant to that order, the Office of the Public Counsel ("OPC") has structured this brief to be broken down into sections that addressed each issue in the same order as they were presented in the list of issues. For each section, the brief begins with a recitation of the issues from the list of issues being addressed followed by the argument. The OPC has decided not to take a position on issue III. Resource Planning; issue XV. Rate Base; or issue XLIII. Streetlighting (West), and so have omitted those issues from this initial brief.

Sibley

Issues Addressed:

II. Sibley AAO and Net Book Value

A. Was the retirement of the Sibley generating facility before the end of its useful life prudent?

1. If no, what if any disallowance should the Commission order?

B. What is the appropriate value for the regulatory liability from Case No. EC-2019-0200?

C. What is the amount of unrecovered investment associated with the Sibley Unit Retirements?

D. What reserve balances should be used for purposes of determining depreciation expense for Evergy West steam production units, consistent with the Commission's determination of Sibley's unrecovered investment?

E. What is the proper amortization period for the regulatory liability related to Sibley?

F. What is the proper amortization period for the unrecovered depreciation investment from the Sibley retirement?

G. Should the net book value be included in rate base?

H. Should the Regulatory liability for Sibley include a rate of return on the undepreciated balance from the time of retirement through the rates effective in this rate case?

I. Should the unrecovered investment in Sibley earn a weighted average cost of capital return on a going forward basis?

Argument:

The OPC's argument regarding the Sibley generating facility can be divided into two distinct parts. The first concerns the prudency of Evergy West's decision to retire the Sibley generating facility twenty-two years before the end of its expected useful life. Addressing this first part will conclude issue A in the above list of issues to be addressed. The second part concerns the proper calculation of the remaining net book value of the Sibley asset and the correct value of the Sibley accounting authority

order ("AAO") that resulted from Case No. EC-2019-0200. This will answer Issues B through I of the above list of issues. The OPC will address both parts in order.

Prudency of the Premature Retirement of the Sibley Generating Station

Evergy West's decision to prematurely retire the Sibley generating facility was imprudent. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 10 ln. 22, ER-2022-0130, EFIS Item No. 570). Before delving into an examination of the reasons why that decision was imprudent, it is first necessary to evaluate the proper legal framework for making that determination.

Review of the Prudency Standard

Missouri law requires that all charges for electric service be "just and reasonable." RSMo. § 393.130.1 "To determine whether a utility's costs meet this statutory standard, the PSC employs a prudence standard." *PSC v. Office of Pub. Counsel (In re Atmos Energy Corporation's 2008-2009 Purchased Gas Adjustment & Actual Cost Adjustment)*, 389 S.W.3d 224, 228 (Mo. App. WD 2012). This standard was developed "in a 1985 case involving the costs incurred by Union Electric Company in constructing its Callaway nuclear plant." *In the Matter of Missouri Gas Energy's Purchased Gas Adjustment (PGA) Factors to be Audited in Its 2002-2003 Actual Cost Adjustment; In the Matter of Missouri Gas Energy's Purchased Gas Adjustment Tariff Revisions to be Reviewed in Its 2001-2002 Actual Cost Adjustment*, 2007 Mo. PSC LEXIS 1186, *25 (citing *In the Matter of the Determination of In-Service Criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway Rate Base and Related Issues. In the Matter of Union Electric Company of St. Louis,*

Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company, 27 Mo. P.S.C. (N.S.) 183, 192-193 (1985)). The standard the Commission ultimately employed had been established by the United States Court of Appeals, District of Columbia, in a 1981 case." *Id.*

"The standard adopted by the Commission recognizes that a utility's costs are presumed to be prudently incurred, and that a utility need not demonstrate in its case-in-chief that all expenditures are prudent." *Id.* (internal quotations and citations omitted). "However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling those doubts and proving the questioned expenditures to have been prudent." *Id.* (internal quotations and citations omitted).

> The Commission, in the Union Electric case, further recognized that the prudence standard is not based on hindsight, but upon a reasonableness standard. The Commission cited with approval a statement of the New York Public Service Commission that:
>
> > . . . the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.

Id. at *26 – 27 (internal quotations and citations omitted). All of this has been fully confirmed and recognized by Missouri's appellate courts. *See*, *e.g.*, *PSC v. Office of Pub. Counsel (In re Atmos Energy Corporation's 2008-2009 Purchased Gas Adjustment & Actual Cost Adjustment)*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012).

Given the Commission's clear prohibition against the use of "hindsight" analysis, it is necessary that any examination of the prudency of Evergy's West's decision to retire Sibley prematurely be constrained to examining only the information that a reasonable decision maker would or should have known at the time the decision to retire Sibley was made. Fortunately, this condition is rendered exceedingly easy in the present case because the OPC has diligently and consistently documented and expressed its concerns regarding the decision to retire Sibley prematurely through numerous filings made **before** the actual retirement itself. Therefore, to ensure that no possible complaint regarding hindsight analysis may be raised against it, the OPC will present its argument demonstrating why Evergy West's decision to prematurely retire Sibley was imprudent based solely on the information the OPC prepared and presented to the Commission **before** the plant was retired.

Catalog of Imprudence

The OPC first raised concerns regarding Evergy West's decision to retire Sibley in the comments offered in response to the company's Integrated Resource Plan 2017 Annual Update. *See* (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), GM-6, ER-2022-0130, EFIS Item No. 572). Specifically, the OPC noted "that the premature retirement of approximately 900 MW of capacity ([Evergy West] and [Evergy Metro] combined) creates significant risk by not fully accounting for the highly uncertain, interdependent energy market and policy arena the revised 'preferred' plan would operate in." *Id*. at GM-6 pg. 5. The OPC further noted that "the

premature forced closure of large amounts of dispatchable base load-serving generation in favor of unknown capacity contracts through the SPP energy market raises prudency concerns moving forward by potentially producing significant stranded costs, increased risk exposure from market volatility and future reliability concerns" and that "it seems GMO is moving from a vertically integrated electric utility to a utility that relies on the capacity and energy of other utilities." *Id.*

Of particular importance to the present analysis, the OPC raised specific concerns regarding Evergy's failure to take the dynamic nature of the SPP market into account as part of its decision to retire Sibley:

> In 2016, SPP approved the reduction of its planning reserve margin from 13.6% to 12%, which lowered capacity requirements in SPP by about 900 MW. Currently, SPP serves a higher percentage of its load from wind than any other U.S. market; SPP set a North American record for wind power of 52.1 percent. However, this record occurred at 4:30 a.m., Feb. 12, 2017 when most of the customers served by SPP were sleeping, not on a hot summer afternoon when peak load is the greatest. As the Renewable Electricity Production Tax Credit (PTC) phase down continues it is likely even more wind generation will come on line in the near-term (assuming additional transmission lines and upgrades to existing infrastructure are approved). The inundation of inexpensive wind and SPP's lowering of its planning reserve margin, combined with flat load growth have created an opportunity to strongly consider accelerating and expanding the retirement of inexpensive, inefficient generating units. If the SPP continues to expand its membership with the Mountain West Transmission Group this argument could conceivably be even stronger. GMO's preferred plan rests, in part, on these conditions. **OPC's concern regarding the preferred plan and the dynamic SPP market centers on the likely reactions from other market participants from these very same price signals. In short, if GMO's IRP modeling suggests retiring significant amounts of base load generation prematurely is prudent; won't other SPP member's modeling show similar results? Under that**

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scenario, a near-term future where excess SPP reserve margins are erased entirely appears plausible. In an attempt to check these assumptions OPC submitted DR-2022 which states:

> *Did KCPL and GMO include its preferred plan coal retirement closures in the SPP 2017 ITP10 unit retirements modeling report?*

The Company responded:

> ***The KCPL and GMO 2017 Integrated Resource Plan preferred plans did not include the same coal plant retirements* (sic) *the SPP 2017 ITP10 report***. *The main reason for this was that SPP requested generator unit updates for the 2017 ITP10 report be submitted by mid-year 2015, at which time it was assumed that the Montrose Units 1,2,3 and Sibley Unites 1,2 would be retired. The new IRP preferred plans are based upon updated assumptions, and the next SPP ITP report process will allow KCPL and GMO to update coal retirements and reflect the most recent IRP preferred plans.*

A further review of the SPP June 2017 Resource Adequacy Report **also does not list any of GPE's or Westar's publically announced plant retirements**. The Company cites reductions in wholesale electricity market prices and near-term capacity needs as justification for accelerated and additional base load retirement, **but these assertions appear to be dependent, at least in part, on operating in a static future**. Further explanation and/or feedback from the Company and/or SPP would be welcomed in providing a macro-market perspective of all of these interdependent actions. Although each regional transmission organization is acutely different in operation and resource mix/availability, **it is worth noting that the PJM, New England and New York ISO's are currently struggling with similar valuation which makes a further analysis of the future adequacy of generation and transmission resources imperative**.

Finally, it is important to note that the SPP reserve margin requirements are going to be based on projected normal weather peak load rather than actual peak load moving forward. Per OPC DR-2002 the Company explained:

> *Utilizing projected normal weather peak load has the effect of reducing the amount of MW required to meet the SPP-mandated reserve margin requirement.*

> Regardless of SPP's new reserve margin requirements, OPC would strongly recommend that the Company's future resource planning efforts consider more volatile peaking scenarios where there is an increase in the frequency and intensity of peak electricity demand. **Because electricity cannot currently be cost-effectively stored at scale, hour-to-hour variability in demand significantly impacts production costs. A heat wave that hits GMO will undoubtedly impact the other utility members of SPP at nearly the same time resulting in less energy being available and excess energy commanding a high price**. Utilities might also experience higher costs operating their transmission and distribution systems as both heat and increased demand strain the networks. **In the long run, an energy market experiencing higher and more frequent peaks will require more investment in new capacity. Such a future scenario should be considered if large amounts of dispatchable generation are retired in the SPP**.

Id. at GM-6 pgs. 3 – 5 (internal citations omitted)(emphasis added). This quite lengthy excerpt, in conjunction with the two previous ones, underlies the primary problem with Evergy's decision to retire Sibley and the rationale for why that decision was imprudent.

At the time Evergy made the decision to retire Sibley, the SPP market was experiencing a number of factors that **if taken in isolation** supported, or at least made more plausible, the decision to retire large, coal-fired generating units. *Id.* However, these factors were not exclusive to Evergy West. *Id.* Other SPP members were seeing the same indicators that Evergy West was observing and the Company should therefore have expected that these other actors would be considering taking the same actions that Evergy West was itself planning. *Id.* However, Evergy West

did not even attempt to consider or model for the actions of other participants in the SPP market. *Id.* Instead, Evergy West pursued a course of action that was dependent on a static future, which is an obviously unreasonable assumption to make. *Id.* This was imprudent. Evergy West knew or should have known at the time (well before the retirement of Sibley occurred) that multiple retirements by various actors in the SPP marketplace would result in a situation where excess SPP reserve margins were eliminated and the susceptibility of the SPP system as a whole to having higher and more frequent peaks would require **more** investment in generating capacity, not less.[1] *Id.* A reasonable person faced with this information would therefore not have

[1] In essence, this potentially counter-intuitive deduction is an expression of a situation in economic science that is often referred to as the "Tragedy of the Commons," which was first coined and described by the economist Garrett Hardin in his article of the same name. Garett Hardin, *The Tragedy of the Commons*, Vol. 162 No. 3859 *Science, New Series*, 1243 (1968). The "tragedy" is expressed by Hardin as such:

> The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy. As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, "What is the utility to me of adding one more animal to my herd?" This utility has one negative and one positive component. 1) The positive component is a function of the increment of one animal. Since the herdsman receives all the proceeds from the sale of the additional animal, the positive utility is nearly + 1. 2) The negative component is a function of the additional overgrazing created by one more animal. Since, however, the effects of overgrazing are shared by all the herdsmen, the negative utility for any particular decision-making herdsman is only a fraction of -1. Adding together the component partial utilities, the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another . . . **But this is the conclusion reached by each and every rational herdsman sharing a commons**. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit-in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

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sought to retire additional generating capacity without at least *looking* at what other market actors were doing. As the excerpt above demonstrates, Evergy West did not consider the actions of other utilities in its calculations and thus failed to act prudently.

The imprudence of Evergy's failure to realize the impact retiring Sibley would have when considering the actions taken by other SPP market members is only exacerbated by the fact that Sibley itself (1) had a significant undepreciated balance remaining, and (2) made up such a large portion of Evergy West's overall load. Both of these concerns were again issues raised **before** the retirement of Sibley occurred. For example, in the same comments to Evergy West's Integrated Resource Plan 2017 Annual Update that was cited to previously, the OPC also stated as follows:

> OPC issued several data requests seeking a better understanding of the potential stranded costs associated with the GMO's preferred plan.
>
> [. . .]
>
> Based on the limited available information, OPC provides the following estimates in Table 2.
>
> Table 2: Estimated total stranded assets of GMO's preferred plan12

Unit to be Retired	GMO Plant in Service - Reserve + Cost of Removal at Retirement Date
Lake Road 4/6	$34,400,426
Sibley 1	$30,122,110
Sibley 2	$23,464,174
Sibley 3	$280,036,531

Id. at 1244 (emphasis added). Applying this well-known principle of economic science to the concept of a regional transmission organization ("RTO") like SPP under the circumstances outlined in the OPC's comments results in a similar outcome. As each utility independently pursues its own self-interest by retiring large coal-fired generating units, the overall ability of the RTO operating as a whole (*i.e.* the "commons" in this scenario) to meet peak demand is diminished until a tragedy occurs.

Sibley Common	$75,406,032
Total Stranded Asset	$443,429,273

> It is important to note that the "cost of removal" consideration may or may not cover the ultimate costs of dismantle/demolition of the plant and reclamation of the site.

Id. at GM-6 pgs. 5 – 7. As is readily apparent from this excerpt, the overall remaining value of the Sibley generating facility was enormous. Even discounting the $34,400,426 unrecovered balance for Lake Road 4/6, the remaining plant balance for Sibley alone is over $400 million dollars. *Id*.

This massive unrecovered plant balance is the result of Sibley's retirement being "accelerated twenty-two years from 2040 to 2018." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 10 ln. 23, ER-2022-0130, EFIS Item No. 570). It is also important to remember that Evergy West's "IRP modeling only considered Sibley as a retirement option and did not consider the possible continued operation of Sibley." *Id*. at pg. 11 lns. 15 – 26. Moreover, Evergy West's IRP "modeling allowed for the continued operation of the Crossroads Energy Center even though Sibley was more profitable and more efficient" and "allowed for the continued operation of the Jeffrey Energy Center even though Sibley was more environmentally friendly[.]" *Id*. at lns. 16 – 20. The OPC's expert witness Dr. Geoff Marke explained why the confluence of these factors demonstrates the imprudence of Evergy West's decision to prematurely retire Sibley:

> Voluntarily stranding an asset with more than twenty-two years of remaining life is extraordinary. If Ford shut down an operating vehicle manufacturing plant it would cease to generate revenues from future car build out from that plant. Why GMO and the Sibley power plant are

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> afforded this luxury and the competitive private sector is not is a result of monopolistic overreach and a distortion of the regulatory process.
>
> Taking the illustrative analogy to the next step, if Ford's management elected to shut down an operating plant that was making Ford F150's at a more efficient, more productive and cleaner rate than other operating plants at a time when Ford's market analysts report increasing current and future demand for F150s then shareholders would rightly question the logic of the decision and most certainly would consider it an "imprudent" management decision because it would impact their bottom line. That feedback loop, whether from shareholders and/or the market is a powerful inducement to operate efficiently. In contrast, incumbent natural monopolies are not beholden to the same level of competitive scrutiny unless economic regulators hold the utility accountable and protect captive ratepayers.

Id. at pg.12 lns. 6 – 19. There are other concerns relating to the impact Sibley had on Evergy's overall resources make-up that also serve as important factors to determining the imprudence of Evergy's decision. These are best considered in the form presented by the OPC in its *Updated Memorandum of Suggested Special Contemporary Topics and planning issues for KCP&L Greater Missouri Operations Company (GMO)* filed on August 14, 2017. (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), GM-7, ER-2022-0130, EFIS Item No. 572).

The Memorandum outlining the OPC's suggested special contemporary topics began with a footnote that stated as follows:

> The change to GMO's preferred plan in its most recent annual update accelerated the retirement of its largest baseload coal plant, which can be dispatched when needed, by 22 years. The new preferred plan adds wind capacity through purchased power contracts that require GMO to "take or pay" regardless of whether the energy is needed by its customers or the current SPP IM price. The plan also includes yet-to-be determined contracts for capacity **which will not include any provision of energy which will increase GMO's reliance on**

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> **energy from the SPP IM**. Also important in this discussion is GMO's current reliance on the Southwest Power Pool ("SPP") integrated market ("IM") for energy. This reliance on market purchases of energy shifts GMO's responsibility of cost-effectively providing energy to its customers to the SPP IM. **Since GMO has an FAC, GMO has little cost recovery risk from this transfer of responsibility to the SPP IM. However there is significant increase in the potential for volatility in cost to GMO's customers, and with potential retirement of base load units by other SPP members, an increase in the risk of availability during times when wind energy is not available**.

Id. at GM-7 pg. 5 n. 1 (emphasis added). As explained in this excerpt, the decision to retire Sibley resulted in Evergy West becoming more and more reliant on the SPP integrated market to meet its generation needs. *Id.* This resulted in Evergy West taking on large amounts of risk associated with the price volatility of that integrated market, which the Company then passed directly on to Customers through its FAC. *Id*. The unnecessary accumulation of risk to be placed on customers by Evergy West constituted an imprudent action. Moreover, the degree of risk to which customers were exposed is significant when considering the amount of Evergy West's generating capacity that Sibley represented.

In the same *Updated Memorandum of Suggested Special Contemporary Topics*, the OPC included a detailed analysis of Evergy West's supply-side resources and management that showed the risks that would be passed onto customers by the premature retirement of the Sibley generating facility:

> A recent presentation by SPP to the Commission in Agenda included a slide that showed that beginning in 2019, **GMO did not meet SPP's Resource Adequacy Requirements**. Neither the SPP representatives nor the GMO representative present could provide an explanation to Chairman Hall. **The SPP Resource Adequacy study**

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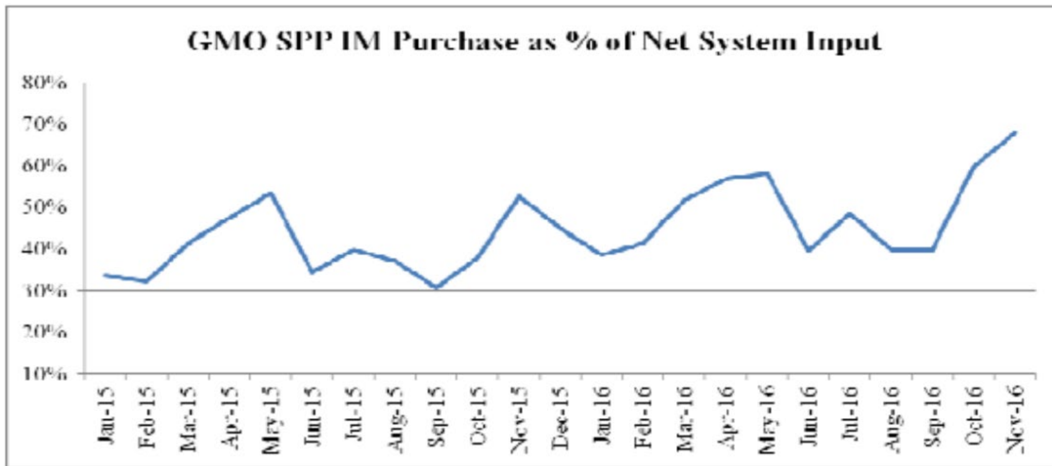
<u>was based on GMO's 2016 preferred plan. GMO's 2016 preferred plan is contingent on unknown capacity contracts beginning in 2019</u>.

This Memorandum highlights why the Commission should consider GMO's premature retirements and the subsequent topic.

<u>In the time period of January 2015 through November 2016, GMO has relied on the SPP Integrated Market (SPP IM) to supply 44% of its customers' energy needs</u>. The graph below shows GMO's monthly reliance on the SPP IM for energy.



<u>Sibley 3 currently is GMO's largest generation unit at 364 MW. It is dispatchable meaning that it can and does follow load. During the time period of January 2015 through November 2016, Sibley 3 supplied 35% of GMO's energy needs</u>. According to GMO's response to Staff's data request 16 in the FAC prudence review case EO-2017-0232, Sibley 3 was to be retired in 2040. GMO's 2017 preferred plan provided 34 days later in EO-2017-0230, accelerated that retirement from 2040 to 2018.

<u>During the time period of January 2015 through November 2016, energy from GMO's current wind purchased power contracts supplied 11% of GMO's energy needs. GMO's current wind purchased power contracts require GMO to "take or pay" at a set price regardless customers' needs or the market price of energy at the time the wind is strong enough to generate energy</u>. Wind power is intermittent and not dispatchable. While GMO does not have to take the wind energy generated, it does have to pay for what is generated. **<u>This results in GMO taking the energy and often "selling" it at a loss on the SPP IM</u>**.

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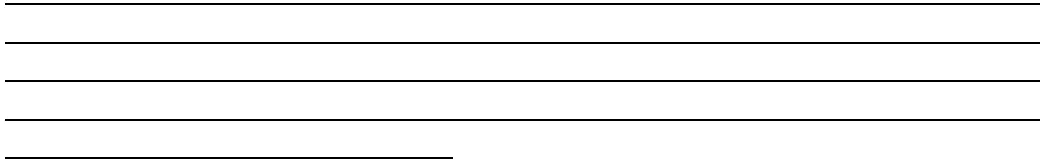
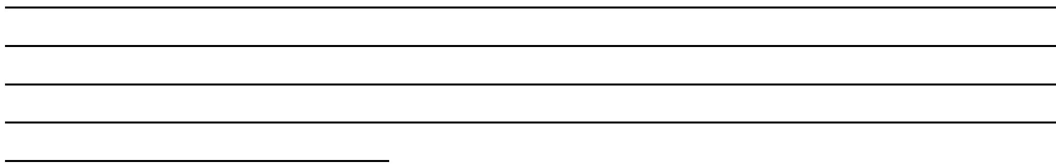
The graph that follows shows the average monthly cost per megawatt-hour (MWh) GMO paid for energy purchased from the SPP IM, the cost wind energy from its purchased power contracts and the average production fuel cost per MWh of the Sibley site. **



** As shown by this graph, the cost of energy generated by the Sibley plants is typically lower than the price of energy purchased on the SPP IM. It also shows that the price of the "take or pay" wind contract was only lower than the cost of purchasing from the SPP IM seven out of the 23 months.

What this graph does not show is the erratic availability of wind energy. This is shown in the following graph: **



> ** In its Resource Plan update, GMO changed its 2016 preferred resource plan to [retire] Sibley 3 (364 MW) early. Its 2017 preferred resource plan replaces this baseload, dispatchable low cost resource with capacity from wind (30 MW accredited capacity) and unknown capacity purchased power contracts to meet its SPP capacity requirements. **It is GMO's current plan to replace any energy that would have been generated by Sibley 3 that is not supplied through its new wind contracts with SPP IM energy purchases. This change in the preferred resource plan will increase GMO's reliance on the SPP IM to meet its customers' energy needs**.
>
> While all of these concerns are limited to GMO, **SPP IM does not operate in isolation**. The resource capacity decisions of all of its members affect the SPP IM prices. **Other SPP members have announced that they are planning for early retirement of their coal plants and also replacing that capacity with wind**. Many of these announcements were made after the June 2017 publication of the SPP Resource Adequacy report. **These retirements have a yet-to-be determined impact on the SPP IM**.

Id. at GM-7 pgs. 2 – 5 (emphasis added). Apart from once again re-affirming the point that Evergy West's IRP analysis supporting the decision to retire Sibley prematurely was faulty – given that it relied on unknown, future capacity contracts and the assumption that the SPP market would remain static – this excerpt illustrates just how impactful retiring Sibley was.

At the time Evergy West made the decision to retire Sibley, the plant constituted the Company's largest generation unit at 364 MW. *Id.* Moreover, being a coal-fired plant, Sibley was considered "dispatchable," meaning that it was capable of following and reacting to Evergy West's load requirements. *Id.* As a result of these two factors, "Sibley 3 supplied **35%** of GMO's energy needs" "[d]uring the time period of January 2015 through November 2016[.]" *Id.* (emphasis added). Sibley thus represented an *enormous* amount of Evergy West's generating capabilities. Despite

this fact, Evergy West's "2017 preferred resource plan replace[d] this baseload, dispatchable low cost resource with capacity from wind (30 MW accredited capacity) and unknown capacity purchased power contracts to meet its SPP capacity requirements." *Id*. This is problematic for two reasons.

First, the reliance on purchased power contracts was already proving to be exceedingly expensive given the "take or pay" wind contracts that Evergy had already entered into and which were consistently forcing Evergy to sell energy at a loss on the market. *Id*. Second, any load requirement *not* covered by either an existing generation or a power purchase agreement that would have previously been supplied by Sibley would now need to be purchased off the integrated resource market. *Id*. This change would necessarily increase Evergy's reliance on the market to meet its own customers' needs. *Id*. As previously discussed, this increase in reliance on the market significantly shifted risk from Evergy West onto its customers through the application of the Company's FAC. The generation and subsequent shifting of this enormous risk related to the volatility of the SPP integrated market onto Evergy West's customers was imprudent in the face of the obvious alternative, which was to maintain Sibley in operation as a prudent and rational hedge against the market. On that front, it may be necessary to discuss the nature of risk and how it relates to the prudence standard and its prohibition on hindsight analysis.

The nature of the prudence standard naturally prevents any party opposing a utility's recovery of a particular cost from pointing to some event that occurred after the decision to incur the cost was made when that event was itself impossible to

predict without the aid of hindsight. *PSC v. Office of Pub. Counsel (In re Atmos Energy Corporation's 2008-2009 Purchased Gas Adjustment & Actual Cost Adjustment)*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012). However, the prudence standard does not and cannot be understood to allow a utility to forego any risk-based analysis whatsoever. This is due to the plain and undeniable fact that "[t]here is a risk in any capital decision a company makes." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 13 lns. 9 – 10, ER-2022-0130, EFIS Item No. 570). As OPC witness Dr. Marke explained:

> Prudence is frequently judged in risk-management terms, as the prudence test centers on whether utility managers make good decisions based on what is "known and knowable" at the time, that is, with due diligence. Prudence is an especially pertinent regulatory standard with regard to risk and risk allocation as prudence calls for anticipating and managing risk with regard to investments and expenditures.

(Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 72 lns. 16 – 20, ER-2022-0130, EFIS Item No. 572). Therefore, the proper application of the prudence standard would be to determine if the risk incurred by the decision adopted by a utility company was "reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight." *PSC v. Office of Pub. Counsel (In re Atmos Energy Corporation's 2008-2009 Purchased Gas Adjustment & Actual Cost Adjustment)*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012). To illustrate this point, consider a simple example.

Consider a publicly traded manufacturing company that owns a warehouse from where the goods it produces are shipped. Assume that the manufacturing company has insured the warehouse (and its contents) against loss due to fire. However, the managers of the manufacturing company later make the deliberate decision to cancel the fire insurance policy in order to save costs. The warehouse then burns down and is lost completely, along with all the goods stored therein. The shareholders of the manufacturing company, upset at the massive loss in stock-value caused by this event, bring suit against the managers claiming that they were imprudent in cancelling the fire insurance policy. The managers defend themselves by arguing that no one could have predicted that *particular* fire and to claim it was imprudent not to maintain the fire insurance policy would therefore require hindsight analysis. The shareholders argue in response that it was not necessary to predict any one given fire; the managers should have maintained the insurance policy because the **risk** of fire outweighed the cost of the policy. Regardless of whether the decision to not maintain the policy was prudent, which would require comparing the cost of the policy to the amount that the manufacturing company risked to lose, it should be clear that the managers of the manufacturing company are incorrect in arguing that a determination of imprudence would require hindsight analysis. On the contrary, the shareholders are clearly right in arguing that the **risk** of a given event occurring as a result of a company's management decisions can be imprudent based on the information that the management knew at the time the decision was made. This is

the argument that the OPC now presents with regard to Evergy's decision to retire Sibley before the end of its useful life.

The risk that Evergy West placed on customers by prematurely retiring Sibley and instead relying on the volatile energy market is directly analogous to the decision of the hypothetical manufacturing company to cancel its fire insurance policy. In both cases, the company in question was exposed to the risk of some major event that would trigger significant costs. In the case of Evergy West, that event was literally anything that would have caused a major increase in the price of energy whether that be a heat-wave during the summer, a major cold-front during the winter, or a severe storm at any point during the year; for the manufacturing company, it was a fire. In both cases, there was some action that the respective Company could have taken to mitigate risk. For Evergy West, that was maintaining Sibley in operation, thus ensuring sufficient generation that could be sold into the market to offset the increase in the price of energy; for the manufacturing company it was an insurance policy. The only real difference between the two is that Evergy West had the benefit of being a regulated monopoly who could just pass those costs on to its captive customers through its FAC; something that the manufacturing company does not have. That is why it is so important for the Commission, the agency that is meant to act as the counterbalance to offset Evergy's privileged status as a regulated monopoly, to see this imprudence and act upon it. Otherwise, the Commission has given Evergy West

a license to operate recklessly, just like the hypothetical manufacturing company who decided to forego fire insurance.[2]

Conclusion on the imprudence of Sibley's premature retirement

No party can question either the size of the unrecovered investment for the Sibley generating facility or its scale when compared to the overall makeup of Evergy West's generating portfolio. Evergy West's decision to retire a dispatchable generating resource of this magnitude without considering the impact that other, similar retirements would have on the overall generating needs of the SPP or the degree of risk that this retirement would pose to Evergy's customers is imprudent. (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 71 ln. 18 – pg. 72 ln. 5, ER-2022-0130, EFIS Item No. 572). Moreover, this conclusion is reached based solely on the information known to Evergy West at the

[2] To further illustrate this point, please consider the example provided by the OPC's witness Dr. Geoff Marke in surrebuttal:

> With that in mind, imagine Evergy wanted to take out an insurance policy against volatile SPP market fuel prices for its two Missouri affiliates. The first affiliate (Evergy West) is experiencing increased load with new, large "economic" customers but is short on capacity. It has exposure to market volatility—exactly what this insurance policy is supposed to cover. The second affiliate (Evergy Metro) is experiencing stagnant growth but is long on capacity. The risk to market volatility is comparatively much lower. Which one do you believe would receive a better deal from the agent charged with assessing risk? The answer is obviously the affiliate that is short on capacity. Any reasonable person can see that. Of course in the real world scenario Evergy ratepayers are the insurance policy. They are the ones Evergy is asking regulators to absorb all of the risk.

(Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 72 ln. 21 – pg. 73 ln. 3, ER-2022-0130, EFIS Item No. 572). Here, Dr. Marke has once again laid out how Evergy West's excessive exposure to market volatility has produced unnecessary risk that Evergy West now seeks to force its captive customers to pay for. *Id.* Most noticeably, Dr. Marke compares Evergy West's treatment of its captive customers to operating in lieu of an insurance policy, which further establishes the comparison between Evergy West and the hypothetical management company who decides to forgo fire insurance. *Id.*

time the Sibley plant was retired. As such, there is no possible argument to be raised to suggest the OPC has relied on hindsight analysis. *Id*. at pg. 74 lns. 4 – 5. The Commission should therefore order a "cost disallowance on the remaining balance associated with Sibley unit 3 and Common over retrofits and environmental upgrades that extended the useful life of the unit to 2040." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 13 ln. 22 – pg. 14 ln. 1, ER-2022-0130, EFIS Item No. 570). This is consistent with how a traditional, competitive market would operate in the face of a stranded investment, as the OPC's witness Dr. Marke explained:

> The entire exercise of utility regulation is supposed to provide an economic proxy for a competitive market. In the competitive market, if an asset becomes stranded it is written off and investors bear the consequences. There is a risk in any capital decision a company makes. That's why management is rewarded as well as they are if they are successful by making sound decisions in the face of competitive risk. The situation with Sibley should be no different.
>
> I cannot stress enough that it was Evergy's management's decision to build the coal plant in the first place. The idea that coal was bad for the environment or for one's health is not a new, novel discovery and Evergy's management was in a better position than anyone to know that when they decided to spend hundreds of millions of dollars by building out rate base and increase earnings off of environmental and efficiency upgrades to extend the useful life of the Sibley Power Plant through 2040.

Id. at lns. 6 – 17. A failure to make this adjustment forces Evergy West's customers into the unfair position of having to pay for both Evergy West's inability to properly manage its resource adequacy – in the form of costs now set to be recovered in the Company's' pending securitization case – *and* the unrecovered balance of a stranded investment that **would** have been able to offset those soon-to-be securitized costs had it been operational. (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public

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and Confidential), pg. 73 lns. 4 – 7, ER-2022-0130, EFIS Item No. 572). It is manifestly unjust to require Evergy West's customers to bear both of these burdens simultaneously. *Id*.

Remaining net book value of Sibley and value of the Sibley accounting authority order

The Commission's *Report and Order* issued in case EC- 2019-0200 included among other things, an order that:

> KCP&L Greater Missouri Operations Company shall record as a regulatory liability in Account 254 the revenue and the return on the Sibley unit investments collected in rates for non-fuel operations and maintenance costs, taxes, including accumulated deferred income taxes, and all other costs associated with Sibley units 1, 2, 3, and common plant. The regulatory liability should quantify separately dollars related to return and other cost of service expense savings.

(Report and Order, pg. 15 ¶2, EC- 2019-0200, EFIS Item No. 96; *see also* Exhibit No. 402 - Surrebuttal Testimony and Schedules of Greg R. Meyer (Public and Confidential), pg. 6 lns. 16 – 22, ER-2022-010, EFIS Item No. 604 (stating same)). The present case involves a number of questions related to the outcome of this order including the proper amount that should be booked into this regulatory liability and what should be done with the liability. In addition, there are other questions that need to be answered, chief among them being the determination of the proper remaining net book value of the Sibley investment. The OPC will answer each of these questions in turn, starting with the determination of the regulatory asset.

Proper determination of the Sibley regulatory asset

A proper determination of the Sibley regulatory asset requires consideration of three separate components: The proper amount of deprecation expense, the proper amount of non-fuel operation and maintenance expense, and the proper amount of the return on the investment.

Depreciation Expense

The Staff of the Commission calculated a depreciation expense of $41.4 million "through November of 2022 based on the depreciation expense built into the 2018 case for all of the Sibley units and common plant, which was approximately $10.3 million annually." (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 12 lns. 14 – 17, ER-2022-0130, EFIS Item No. 574). MECG witness Mr. Gregg Meyers "calculates that from June 30, 2018, through December 6, 2022, depreciation expense would be approximately $46 million." *Id.* at pg. 13 lns. 10 – 11. "[B]oth parties are using the same depreciation expense on an annual basis" and "[t]he only difference appears to be the date balances are updated through." *Id.* at pg. 17 lns. 6 – 7. Because the effective date for new rates in this case is December 6, 2022, which is the date Mr. Meyer updated his calculations through, his number should be utilized for determining the depreciation expense. Therefore, the Commission should find that the depreciation expense to be included in the Sibley regulatory asset is approximately $46 million. *Id.* at pg. 13 lns. 10 – 11.

Labor and non-fuel operation and maintenance expenses

Both Staff and MECG determined that the proper labor and non-fuel operation and maintenance expense to be included in the Sibley regulatory asset was $39.1 million. *Id.* at pg. 17 lns. 10 – 12. Therefore, the Commission should find that the labor and non-fuel operation and maintenance expense to be included in the Sibley regulatory asset is approximately $39.1 million.

Return on Sibley Investment

This figure is more complicated. At heart, the math is quite simple. The return on investment for the Sibley plant is the net book value of the plant, multiplied by the rate of return, multiplied by the four years between the last rate case and the present one. There are, however, two problems that both stem from the same source. The prior Evergy West rate case (ER-2018-0146) was resolved by *Stipulation and Agreement* by the parties. (*see* Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement, ER-2022-0130, EFIS Item No. 582). This agreement specifically resolved the issue of the Cost of Capital for that case as part of a black box settlement. *Id*. at pg. 1 ¶ 1. The Stipulation did not specifically resolve the issue of the net book value of the Sibley investment, but that was only because there was no issue raised regarding the net book value of the Sibley investment in that case. (*See*, *e.g.*, Corrected List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements, ER-2018-0146, EFIS Item No. 248). Thus, there is a certain gap of information that is necessary to otherwise comply with the Commission's order from EC- 2019-0200. Fortunately, there are several solutions readily at hand.

First, let us consider the matter of the proper rate of return. While not a perfect match, there are at least two statutory guideposts to consider. The first comes in the form of the Gas Infrastructure Replacement Surcharge legislation (RSMo. section 393.1015), which requires the Commission to consider "[t]he gas corporation's actual regulatory capital structure as determined during the most recent general rate proceeding of the gas corporation;" "[t]he actual cost rates for the gas corporation's debt and preferred stock as determined during the most recent general rate proceeding of the gas corporation;" and "[t]he gas corporation's cost of common equity as determined during the most recent general rate proceeding of the gas corporation." RSMo. §393.1015(4).4(2), (3), (4). However, the statute also has a provision that states:

> In the event information pursuant to subdivisions (2), (3), and (4) of this subsection is unavailable and the commission is not provided with such information on an agreed-upon basis, the commission shall refer to the testimony submitted during the most recent general rate proceeding of the gas corporation and use, in lieu of any such unavailable information, the recommended capital structure, recommended cost rates for debt and preferred stock, and recommended cost of common equity that would produce the average weighted cost of capital based upon the various recommendations contained in such testimony.

RSMo. §393.1015(4).4(7). Stated simply, the statute tells the Commission that, if it does not have a rate of return to use from the gas corporation's last rate case, the Commission needs to go back to the testimony filed in the last case and use the averages of the proposed values filed in testimony. *Id*. Applying this logic to the present case, to determine the rate of return to apply in accordance with the Commission's order in EC- 2019-0200, the Commission would need to use the average

of the filed rate of return recommendations from the 2018 case. Fortunately, for the Commission, this is precisely what the OPC has done. (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 18 ln. 16, ER-2022-0130, EFIS Item No. 574). Specifically, the OPC determined that the average of the filed rate of return recommendations from the 2018 case was 8.73%. *Id.*

The second potential statutory guidepost is RSMo. section 393.1400 (the Plant in Service Accounting legislation), which includes this definition of weighted average cost of capital:

> [T]he return on rate base used to determine the revenue requirement in the electrical corporation's most recently completed general rate proceeding; provided, that in the absence of a commission determination of the return on rate base within the three-year period prior to August 28, 2022, the weighted average cost of capital shall be determined using the electrical corporation's actual capital structure as of December 31, 2021, excluding short-term debt, the electrical corporation's actual cost of long-term debt and preferred stock as of December 31, 2021, and a cost of common equity of nine and one-half percent.

RSMo. § 393.1400(5). If the Commission were to apply this standard, than the best answer to the question of what the proper return on equity should be was provided by MECG witness Gregg Meyer who testified that "[a] rate of return assuming a 9.5% Return on Equity ("ROE") would equate to a pre-tax rate of return of 8.576%." (Exhibit No. 400 - Direct Testimony of Greg R. Meyer (Public and Confidential), pg. 11 lns. 4 – 5, ER-2022-0130, EFIS Item No. 602).

Having provided two possible solutions to the issue of not having a rate of return, the next issue is the remaining net book value of the Sibley investment that

was included in rates in case ER-2018-0146. Here the best answer comes from the Commission Staff ("Staff") true-up accounting run filed in that case and the workpapers filed by Evergy West to support its case. Both of these sources provide a net book value for the Sibley investment of $300 million dollars.[3] (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 15 ln. 4 – pg. 16 ln. 3, ER-2022-0130, EFIS Item No. 574). Given there was no other evidence provided to demonstrate what the net book value of the Sibley investment was at the time rates were set in the last rate case, and that the net book value was not an issue identified as being resolved via the *Stipulation and Agreement* that determined the last rate case, the only reasonable answer to determining the net book value of the Sibley investment that was included in rates in case ER-2018-0146 is to employ the amount effectively agreed upon by both Staff and the Company in that case.

Having found answers to the two necessary questions posed by the Commission's order in EC- 2019-0200, it is now possible to calculate "the return on the Sibley unit investments collected in rates." (Report and Order, pg. 15 ¶2, EC-2019-0200, EFIS Item No. 96; *see also* Exhibit No. 402 - Surrebuttal Testimony and Schedules of Greg R. Meyer (Public and Confidential), pg. 6 lns. 16 – 22, ER-2022-010, EFIS Item No. 604 (stating same)). Again, that calculation involves simply multiplying the $300 million net book value by the rate of return and then multiplying again by the four years that rates were in effect. (Exhibit No. 310 -

[3] There is a difference between the two values calculated by Staff and the Company in an amount equal to $3.00. Robinett Rebuttal pg. 16 lns. 2 – 3. This value is so small that it can be eliminated as a simple rounding error.

Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 17 lns. 16 – 18, ER-2022-0130, EFIS Item No. 574). The result of the calculations are found in the following table:

	8.73% Rate of Return	8.576% Rate of Return
Return on Sibley Investment	$104.7 million	$102.9 million

(Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 19 lns. 1 – 5, ER-2022-0130, EFIS Item No. 574); (Exhibit No. 400 - Direct Testimony of Greg R. Meyer (Public and Confidential), pg. 11 lns. 5 – 8, ER-2022-0130, EFIS Item No. 602). The values given are very similar, so the OPC does not take any strong position on which the Commission should choose. For the remainder of this brief, the OPC will proceed on the assumption that the method to determine rate of return that it employed (the average of testimony from the last rate case method) was correct and will hence use $104.7 million for the return on investment component for Sibley.

Remaining net book value of the Sibley Investment

Having examined the components that make up the proper amount to be booked to the regulatory asset ordered by the Commission in case EC- 2019-0200, the next step to resolving this issue concerns determining the proper remaining net book value for the Sibley investment to use as a starting point when computing the amount to still be recovered (if any). Fortunately, this issue has already been addressed in the calculation of the return on investment portion of the regulatory asset. To reiterate, both the Staff's true-up accounting run filed in that case and the

workpapers filed by Evergy West to support its case provide a remaining netbook value for the Sibley investment of $300 million dollars. (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 15 ln. 4 – pg. 16 ln. 3, ER-2022-0130, EFIS Item No. 574). Under any other circumstances, the resolution of this issue would simply cease here. Unfortunately, Evergy West has decided to significantly complicate matters by providing another answer to this question and has somehow convinced the Staff into agreeing with that position.[4] Because the Company's position was never approved by the Commission and directly contradicts Evergy West's own workpapers from the last general rate case, the OPC does not consider it necessary to further belabor this brief with a detailed analysis of the Company's error. The OPC will instead reserve its discussion of the Company's erroneous argument for reply briefing. For now, the OPC will proceed on the only logical basis presented, which is that the remaining net plant balance of Sibley from the last general rate case was the $300 million found by both Staff and Evergy West in the last rate case. *Id.*

What stands to be recovered and how

Having determined the amounts included in the Sibley regulatory asset and the remaining net book value of the Sibley generating facility, the remaining issues pertaining to Sibley relate to how those costs should be considered in determining what remains to be recovered for Sibley and over what period the remaining value

[4] It should be noted that it is not completely clear to what degree Staff actually agrees with the Company's position. A more lengthy analysis of Staff's incomplete and inconsistent review of this issue and the immense negative ramifications that stem from that failure have been omitted here to save space and will instead be addressed in the OPC's reply brief.

for Sibley should be recovered. In answering these issues, it is necessary to answer four questions: (1) should Evergy West be permitted to earn a return on the Sibley investment or should the return already accrued in the AAO be returned to customers; (2) what, if anything, should be done with the decommissioning and dismantlement costs related to the Sibley facilities; (3) what is the mathematical amount left to recover for Sibley; and (4) over what period should the Sibley plant and/or the Sibley AAO be amortized. We shall review each in order.

Return on the Sibley Investment

The question of whether Evergy West should be permitted to earn a return on the remaining net book value of the Sibley investment turns primarily on the question of whether the Sibley plant is "used and useful." As explained by MECG witness Gregg Meyer:

> I do not think that ratepayers should provide a profit stream for investments that are no longer used and useful. There is no debate that in mid-November 2018, the Sibley units were retired and ceased operations. At that time, the Sibley units stopped producing energy for Evergy customers and as such were not used and useful. To require ratepayers to continue to provide a profit return on plants that are not used and useful is wrong. Therefore, the return on the Sibley units should be accumulated from the date of retirement until the date for new rates in this rate case and amortized to Evergy ratepayers.

(Exhibit No. 400 - Direct Testimony of Greg R. Meyer (Public and Confidential), pg. 10 lns. 13 – 20, ER-2022-0130, EFIS Item No. 602). A similar sentiment was expressed by the witness for Staff Mr. Kieth Majors: "As a general rule in Missouri, recovery of plant assets that are not 'used and useful' in rates has not been allowed, and Sibley since late 2018 has neither been used by Evergy West to generate

electricity nor useful to Evergy West customers as a source of meeting customer demands." (Exhibit No. 218 - Direct Testimony of Keith Majors, pg. 13 lns. 22 – 25, ER-2022-0130, EFIS Item No. 497). Moreover, this sentiment has been expressly affirmed by Missouri's courts:

> The utility property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful. This used and useful concept provides a well-defined standard for determining what properties of a utility can be included in its rate base.

State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo., 293 S.W.3d 63, 75 (Mo. App. S.D. 2009) (citing *State ex rel. Union Elec. Co. v. Pub. Serv. Com.*, 765 S.W.2d 618, 622 (Mo. App. W.D. 1988)). This standard was cited with approval by this Commission in the recent decision regarding the securitization of the Asbury generating facility by the Empire District Electric Company. (Amended Report and Order, pg. 67, EO-2022-0040, EFIS Item No. 186 ("The cost of the abandoned environmental projects at Asbury meet the definition of energy transition costs as defined by the securitization statute. As such those costs may be recovered through securitization. However, those costs would not be includible in Liberty's ratebase **and thus it may not recover a return on those investments**")(emphasis added)).

There is no question that the Sibley investment is no longer used and useful. This was demonstrated quite clearly in the following exchange between the OPC and Staff witness Mr. Keith Majors held during the hearing:

> You're familiar with the Sibley 3 Generating Facility units 1, 2, and 3?
>
> MR. MAJORS: Yes.

MR. CLIZER: And it's accurate to say it's been fully retired at this point, correct?

MR. MAJORS: Yes.

MR. CLIZER: And in fact, Evergy has begun -- or at least begun the dismantlement of the (audio cuts out), correct?

MR. MAJORS: I believe it's complete, but they have begun it. Yes.

MR. CLIZER: That was going to be my next question. So it was accurate to say they have completed dismantlement?

MR. MAJORS: Yes.

MR. CLIZER: So it is accurate to say that the Sibley facility will no longer be used for generating electricity?

MR. MAJORS: As it stands today, yes.

Tr. Vol. 8 pg. 208 lns. 2 – 20. In the light of this fact, Missouri law clearly states that the Sibley investment is not subject to inclusion in ratebase or otherwise "property upon which a rate of return can be earned[.]" *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63, 75 (Mo. App. S.D. 2009). In the same vein, the return on equity component recorded as part of the regulatory asset ordered in EC-2019-0200 was never legally subject to recovery by Evergy and should therefore be returned to customers. *Id.*; (Exhibit No. 218 - Direct Testimony of Keith Majors, pg. 13 lns. 22 – 25, ER-2022-0130, EFIS Item No. 497).

Decommissioning and Dismantlement costs

As first described by the OPC's witness Mr. John Robinett, "Evergy has decommissioned and dismantled the Sibley facilities." (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 19 ln. 11, ER-2022-0130, EFIS Item No. 574). "Additionally, Evergy abated asbestos from the units prior to dismantlement and closed the ash ponds." *Id.* at lns 11 – 12. "Based on Evergy's

response to OPC data request 8519 in Case No. ER-2022-0130, an amount of $37,257,169 needs to be collected to make Evergy whole for these expenditures." *Id*. at lns. 13 – 15. The OPC's recommendation would be to remove this amount, which is currently included in ratebase and include it instead in the amount to be amortized for the remaining Sibley plant. *See Id*. at lns. 15 – 18. Staff agrees with this position. (Exhibit No. 269 - Surrebuttal/True-Up Direct Testimony of Keith Majors, pg. 5 lns. 6 – 16, ER-2022-0130, EFIS Item No. 548).

Mathematical Calculations

All components necessary to determine what amount remains to be recovered or returned in relation to the Sibley investment have now been addressed. All that remains is to add the components together. The OPC's position is that all components of the Sibley investment and regulatory asset should be summed together and the resulting balance should be recovered from customers or amortized back to customers as necessary. The calculation to be performed is as follows: Remaining Net Book Value of Sibley + Decommissioning and Dismantlement Costs – Depreciation Expense in the Sibley Regulatory Asset - Labor and Non-fuel Operation and Maintenance Expenses in the Sibley Regulatory Asset – Return on Investment in the Sibley Regulatory Asset. The OPC will provide two calculations depending on whether the Commission orders the disallowance related to the impudent decision to retire Sibley addressed earlier in this brief:

	Imprudence Disallowance	No Imprudence Disallowance
Remaining Net Book Value of Sibley	$0[5]	$300 million
Decommissioning and Dismantlement costs	+ $37.3 million	+ $37.3 million
Depreciation Expense in the Sibley Regulatory Asset	- $46 million	- $46 million
Labor and non-fuel operation and maintenance expenses in the Sibley Regulatory Asset	- $39.1 million	- $39.1 million
Return on Investment in the Sibley Regulatory Asset	- $104.7 million	- $104.7 million
Total	-$152.5 million	$147.5 million

Period over which the Sibley plant and/or the Sibley AAO should be amortized

Sibley was originally slated for retirement in 2040. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 10 ln. 23, ER-2022-0130, EFIS Item No. 570). Given that it will be December of 2022 by the time rates for this case go into effect, it can safely be said that there are approximately 17 years between the current date and when Sibley would otherwise have been retired. Thus, the Sibley plant and/or the Sibley AAO should be amortized over a 17 year period. In the event that the Commission orders the imprudence disallowance, this would result in a maximum reduction in Evergy's rates equal to $8.97 million annually ($152.5 million / 17 years).

[5] The OPC does not have a calculation in the record for the exact amount for the Remaining Net Book Value of the Sibley generating facility if its proposed disallowance is ordered. For the sake of this exercise, the OPC will treat the disallowance as if it removed **all** the remaining net book value of Sibley. The OPC believes that this is a gross overstatement of how much its proposed disallowance would actually remove from this equation. The Commission should therefore treat this calculation as the *maximum* that might result if the Commission orders the OPC's proposed disallowance.

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In the event that the Commission does not order the imprudence disallowance, this would result in an increase to Evergy's rates equal to $8.68 million annually ($147.5 / 17 years).

<u>AMI</u>

<u>Issues Addressed:</u>

IV. AMI

A. Should the Commission approve a disallowance related to the replacement of AMI meters with AMI meters that have the capability to disconnect/reconnect service (AMI-SD)?

B. Should the Commission order Evergy Metro to change its deployment strategy so that it no longer prioritizes customers in arrearage?

C. Did Evergy exceed the 6% annual PISA spend limit on AMI meters?

1. If yes, what actions, if any, should the Commission take in response?

<u>Argument:</u>

The OPC will address each of the issues raised in relation to the question of AMI meters separately and in the order that they were presented in the list of issues. However, the OPC's response to the first of these issues will be broken down into three parts.

<u>Disallowance related to the replacement of AMI meters</u>

Evergy collectively is currently "in the process of replacing its recently installed AMI (meter) models with updated AMI models because the original models do not have a remote disconnection capability." (<u>Exhibit No. 306 - Direct Testimony of Geoff Marke</u>, pg. 8 lns. 11 – 12, ER-2022-0129, EFIS Item No. 556; <u>Exhibit No. 306 - Direct Testimony of Geoff Marke</u>, pg. 14 lns. 6 – 9, ER-2022-0130, EFIS Item No. 570). The Company has failed to present any meaningful evidence to show why this second generation of meters will provide benefits that justify its costs. Consequently, the Commission should "disallow costs related to any second generation AMI meters and associated installation costs." (<u>Exhibit No. 306 - Direct Testimony of Geoff Marke</u>,

pg. 16 lns. 7 – 8, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 22 lns. 7 – 8, ER-2022-0130, EFIS Item No. 570). To further elaborate on this point, the OPC will examine three crucial factors.

The scale and degree of the stranded investment

Evergy began its AMI meter deployment in early stage testing in 2010. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 8 ln. 20 – pg. 9 ln. 2, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 14 ln. 15 – pg. 15 ln. 1, ER-2022-0130, EFIS Item No. 570). However, the bulk of the switch from then existing AMR and manual-read meters to new AMI meters occurred during the period between late 2014 and early 2016. *Id.* (note the shift from 7.80% AMI in 4th quarter 2014 to 75.40% AMI in the 2nd quarter of 2016). These first generation AMI meters have a depreciable life of 20 years. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 8 ln. 19, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 14 ln. 14, ER-2022-0130, EFIS Item No. 570). This means that for the majority of the first generation AMI meters installed in and around 2015, the meters have achieved only 7/20 or 35% recovery.[6] Even the earliest AMI meters, "the 9,004 meters installed in the 2010 Smart Grid Zone Demonstration Project, would still be 40% undepreciated." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 10 lns. 7 – 8, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 16 lns. 7 – 8, ER-2022-0130,

[6] Indicating 7 years between 2015 and 2022.

EFIS Item No. 570). This significant degree of under recovery is exacerbated by exceedingly high dollar amounts related to this investment.

"Evergy has not recorded the AMI meters on the books as 'old' or 'new' nor do they intend to open up a new subaccount for the new meters." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 14 lns. 4 – 5, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 20 lns. 4 – 5, ER-2022-0130, EFIS Item No. 570). This obviously makes it quite difficult to separate the dollar amounts related to the first and second generation of AMI meters. However, by only looking at the plant values recorded in Evergy's prior general rate case, which took place in 2018, it becomes easier to understand the dollars invested in just the first generation of meters. "Account 370.02 Meters - AMI Distribution for Evergy Missouri Metro in the 2018 true-up accounting schedules, which are through June 30, 2018, had a Missouri Jurisdictional plant-in-service of $33,812,886 with an accumulated reserve of $4,081,223." (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 6 lns. 7 – 9, ER-2022-0129, EFIS Item No. 560; Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 6 lns. 7 – 9, ER-2022-0130, EFIS Item No. 574). This leaves a net book value for the first generation of AMI meters for Evergy Metro Missouri jurisdiction of $29,731,663. Switching to Evergy West, Staff's true-up accounting schedules for the same account and period "had a Missouri Jurisdictional plant-in-service of $21,777,871 with an accumulated reserve of $1,230,040." *Id.* at pg. 7 lns. 15 – 17. This yields a net book value for the first generation of Evergy West AMI meters of $20,547,831. Taken

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together, the net book value for first generation AMI meters as of the Staff true-up period of the last Evergy rate case (June 30th 2018), after accounting for the Missouri jurisdictional allocation, was $50,279,494.

While the preceding does give some understanding of the scope of Evergy's investment in the first generation of AMI meters, it does not paint a complete picture. For example, it does not take into account the cost of Evergy's Customer Information System (one CIS) that was installed to unlock the capabilities of the AMI hardware. Tr. Vol. 9 pg. 426 ln. 12 – pg. 427 ln. 7. That software adds an additional $155 million in costs, after Missouri jurisdictional allocation. (Exhibit No. 275 - Staff Accounting Schedules, PDF pg. 6 ln. 24, ER-2022-0129, EFIS Item No. 540; Exhibit No. 275 - Staff Accounting Schedules, PDF pg. 6 ln. 24, ER-2022-0130, EFIS Item No. 554). Nor does it help that the amounts included in the Staff true-up from the last rate case do not include all the AMI investments that occurred after June 2018. (*see* Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 8 ln. 20 – pg. 9 ln. 2, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 14 ln. 15 – pg. 15 ln. 1, ER-2022-0130, EFIS Item No. 570). However, it does help to show the scale of the stranded investment that Evergy West has willingly created through its decision to retire the first generation of AMI meters long before most of them can even claim to be half-way recovered. The creation of a stranded investment of this scale is "a text-book example of an imprudent capital investment" that should be disallowed. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 16 lns. 12 – 13,

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ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 22 lns. 12 – 13, ER-2022-0130, EFIS Item No. 570).

The lack of benefits from either the first or second generation of AMI meters

The primary benefit of AMI meters is "[t]he ability to price electricity closer to the true cost of service through time-of-use rates ("TOU")." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 10 lns. 10 – 12, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 16 lns. 10 – 12, ER-2022-0130, EFIS Item No. 570). However, Evergy has failed to offer TOU rates to any meaningful degree. *Id.* at lns. 13 – 14. Instead, "[t]he Company has put on a small pilot that encompassed approximately 1% of its customer base and conducted at least thirteen rate-payer funded 3rd party studies to date." *Id.* at lns. 14 – 15. As such, Evergy's customers are not receiving any real benefits from the investments the Company has made in AMI and the One CIS billing system. *Id.* at lns. 16 – 18. This has led to numerous complaints including "at least two Change.org petitions with approximately 70,000 signatures demanding an audit of the Company." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 11 lns. 1 – 2, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 17 lns. 1 – 2, ER-2022-0130, EFIS Item No. 570). Given these factors, it should be quite obvious that the first generation of AMI meters has already failed to pay for themselves, let alone justifying the investment in a complete second generation. (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 34 lns. 20 – 25, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff

Marke (Public and Confidential), pg. 34 lns. 20 – 25, ER-2022-0130, EFIS Item No. 572).

Notwithstanding the lack of evidence to support Evergy's investment in the first generation of AMI meters, the OPC would be remiss if it did not also discuss why the second generation of AMI meters is unjustified. To reiterate, the second generation of AMI differs from the first primarily in the ability to disconnect customers remotely. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 8 lns. 11 – 12, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 14 lns. 6 – 7, ER-2022-0130, EFIS Item No. 570). So what benefits do the ability to remotely disconnect bring to customers? As OPC witness Dr. Marke explained, the best argument for justifying the disconnection feature of the second generation of AMI meters is Evergy's claim that "[i]t would create O&M savings through the elimination of about 25 meter reader jobs over the next three years." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 13 lns. 5 – 7, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 19 lns. 5 – 7, ER-2022-0130, EFIS Item No. 570). It is possible to directly quantify this benefit utilizing the Company's response to OPC DR-2123 which claims the "base salary of a meter reader in 2022 is $79,950 or $131,455 with benefits[,]" which will "increase to $86,097 or $138,109 with benefits" by 2025. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 13 lns. 8 – 11, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 19 lns. 8 – 11, ER-2022-0130, EFIS Item No. 570). Unfortunately, even as abnormally large as these salaries appear on their face,

eliminating 25 jobs at $80K apiece would still fail to provide enough cost savings to offset the millions of dollars that Evergy will need to invest in a second set of AMI meters. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 13 lns. lns. 12 – 14, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 19 lns. lns. 12 – 14, ER-2022-0130, EFIS Item No. 570). It is true that Evergy attempts to make up for this failure to justify the expenditures by offering a handful of other benefits that may be achieved from having AMI meters (whether first or second generation) such as "outage communication and reduced truck rolls related to reconnection/disconnection." (Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 37 lns. 20 – 21, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 37 lns. 20 – 21, ER-2022-0130, EFIS Item No. 571). However, Evergy has offered no "empirical support to substantiate that these realized, or hope to be realized, benefits offset the costs to ratepayers." *Id.* at pg. 38 lns. 2 – 4. Evergy further fails to discuss "the most notable benefit to the Company, that is, hundreds of millions of dollars in increased rate base to increase earnings." *Id.* at lns. 6 – 7. "To date the costs have been realized in ratepayer bills but the benefits for ratepayers have been delayed indefinitely." *Id.* at lns. 8 – 9. This brings the analysis to the third and final point to consider: Evergy's attempt to gold plate its system.

Evergy's attempt at gold plating

Evergy "is gold plating their distribution investment in meters by prematurely retiring there first generation AMI meters only a few years into their useful life with

AMI Service-Disconnect meters whose sole distinguishing 'benefit' is its ability to remotely disconnect a customer." (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 29 lns. 10 – 13, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 29 lns. 10 – 13, ER-2022-0130, EFIS Item No. 572). The OPC's witness Dr. Marke succinctly explained what this means and how it is occurring:

> Gold plating is premised on the fact that the "allowed profit" for a utility is based on the size of its rate base; thus utilities have a perverse incentive to augment its capital stock in any manner that will increase rate base. In this case it would be replacing an expensive meter only a few years after it had been put in service with effectively the same meter but with small incremental differences (e.g., the ability to remotely disconnect a customer). Ratepayers are now in a position of having to pay for two advanced meters despite needing only one to record your usage and investors are able to earn a larger profit now as both the three-year old meter and the brand new AMI Service-Disconnect meter are in rate base. Over-investment (or over-capitalization) by a utility has obvious implications for rates by consumers (they are needlessly increased) and also for the efficiency of resource allocation (capital costs could have been directed towards more meaningful actions).

Id. at pg. 29 ln. 18 – pg. 30 ln. 6.[7] Evergy's decision to install a first generation of AMI meters only to later replace them with a second generation of AMI meters, based solely on the existence of a disconnect function, despite the fact that the second generation of AMI meters were available at the time the first generation was

[7] The phenomenon of gold plating is also known as the "Averch-Johnson Effect" and "was first articulated in the seminal work by economists Harvey Averch and Leland Johnson in an article titled 'The Behavior of the Firm Under Regulatory Constraint,' printed in the American Economic Review, December 1962." (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 29 n. 34, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 29 n. 34, ER-2022-0130, EFIS Item No. 572).

installed, demonstrates the nature of Evergy's gold plating. *See* Tr. Vol. p pg. 441 lns. 9 – 14. Evergy could have installed these AMI meters with service disconnect functions as far back as 2007, but actively chose not to. *Id*. Instead, Evergy deliberately engineered a scenario where "[t]he current AMI meters are not being replaced because they are at the end of their useful life but instead to increase rate base and make it easier for customer to be disconnected." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 16 lns. 8 – 10, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 22 lns. 8 – 10, ER-2022-0130, EFIS Item No. 570). "Failure to call the Company out on this practice will set a dangerous precedent for all future investments moving forward." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 16 lns. 10 – 12, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 22 lns. 10 – 12, ER-2022-0130, EFIS Item No. 570).

Adding to the concerns regarding Evergy's attempt to gold plate its distribution system is Evergy's effort to hide the investments from regulators. "None of the 20 witnesses who filed [direct] testimony [in this case] spoke about the need to replace their recently installed AMI meters with new AMI meters." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 16 lns. 19 – 20, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 22 lns. 19 – 20, ER-2022-0130, EFIS Item No. 570). In fact, the OPC only became aware of this issue "[t]hrough discussions during a technical conference the Company was holding as it sought various waivers from the Commission's rule on billing practices and consumer

protections." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 16 lns. 22 – 23, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 22 lns. 22 – 23, ER-2022-0130, EFIS Item No. 570). These discussions, by the way, occurred as part of an entirely separate case (case no. EE-2022-0071). Tr. Vol. 9 pg. 424 lns. 14 – 22. Moreover, the means by which the OPC discovered this issue renders one of the Company's responses to the OPC's position on AMI rather troubling. As Dr. Marke explains:

> **Q. But Mr. Caisley says no customers are surrendering their Chapter 13 consumer protections. So, no harm. What is your response?**
>
> A. Evergy filed Case No. EE-2022-0071 requesting waiver's from the Commission's Chapter 13 rules to make it easier to disconnect a customer. In fact, after Staff filed its motion to dismiss the case due to concerns surrounding the interplay of Evergy's request and this rate case, Evergy counsel filed a Motion for Consideration to seek Commission approval for the Company to waive Chapter 13 rules over disconnection. This also occurred on the same day Mr. Caisley filed his testimony attesting that no customers are surrendering any Chapter 13 rules. Although he is technically true, I would argue he just failed to finish his thought, "because the Commission has not approved our request yet."

(Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 40 lns. 7 – 16, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 40 lns. 7 – 16, ER-2022-0130, EFIS Item No. 572). To review, the OPC did not learn of Evergy's attempt to replace the entirety of its existing AMI meters from the rate case. Instead, the OPC first learned about these replacements in the context of a rule waiver case where Evergy sought Commission approval for remote disconnections (which will be necessary for

utilizing the one defining difference between the current and new AMI meters). At the same time, Evergy argued in response to the OPC's position in the general rate case that customers were not being asked to surrender their chapter 13 protections prohibiting remote disconnections, even as the Company actively sought to waive those same protections, which is not just blatantly misleading but also undermines the very purpose for installing the new AMI meters in the first place.

Conclusion

As expressed at the beginning of this section, "[c]ustomers who have not realized any meaningful benefits from the original AMI deployment are now . . . being asked to pay for another meter on top of the first one." (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 34 lns. 24 – 25, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Sur rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 34 lns. 24 – 25, ER-2022-0130, EFIS Item No. 572). Moreover, the amount of the first set of AMI meters that still needs to be recovered is significant, with even the very oldest AMI meters being at least "40% undepreciated." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg.10 lns. 7 – 8, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg.16 lns. 7 – 8, ER-2022-0130, EFIS Item No. 570). At the same time, Evergy has fundamentally failed to present any empirical evidence to show why this second generation of AMI meters will provide benefits that justify its costs. Marke (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 35 lns. 1 – 9, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of

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Geoff Marke (Public and Confidential), pg. 35 lns. 1 – 9, ER-2022-0130, EFIS Item No. 572). This is nothing short of "blatant gold-plating of [Evergy's] distribution system[.]" *Id*. at pg. 29 ln. 15. Consequently, the Commission should "disallow costs related to any second generation AMI meters and associated installation costs." (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 16 lns. 7 – 8, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 22 lns. 7 – 8, ER-2022-0130, EFIS Item No. 570).

Ordering a change to Evergy's deployment strategy so that it no longer prioritizes customers in arrearage

"Evergy is targeting renters and customers with a history of arrearages with AMI Service Disconnection meter replacement as opposed to some seemingly more efficient strategy like bulk replacement by zip codes." (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 39 ln. 23 – pg. 40 ln. 1, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 39 ln. 23 – pg. 40 ln. 1, ER-2022-0130, EFIS Item No. 572). This appears to be discriminatory behavior designed to get struggling customers disconnected quicker for non-payment. *Id*. at pg. 40 lns. 1 – 6. The Commission should order Evergy to cease operating in this manner and switch to a more efficient strategy like making bulk replacements by zip code.

Addressing Evergy's exceeding of the annual PISA spend limit on AMI meters and what the Commission should do in response

"Evergy Metro and West elected Plant-In-Service Accounting ("PISA") on December 31, 2018. *Id.* at pg. 42 lns. 3 – 4. The PISA legislation includes a provision that reads:

> For each of the first five years that an electrical corporation is allowed to make the deferrals provided for by subsection 2 of this section, the purchase and installation of smart meters shall constitute no more than six percent of the electrical corporation's total capital expenditures during any given year under the corporation's specific capital investment plan.

RSMo. § 393.1400.4. The PISA legislation makes no differentiation between first and second generation AMI meters. *Id.* OPC witness Dr. Marke hypothesizes that this is because nobody involved in the drafting of the legislation could have "anticipated a situation where a utility would be going through a second round of smart meter investment within the first five years of PISA[.]" *Id.* at lns. 13 – 14. This presents a problem given that it appears both Evergy Metro and Evergy West have exceeded the statutory limitations for 2020 and 2019, respectively. *Id.* at lns. 14 – 17. Specifically, the tables included in the surrebuttal testimony of Dr. Marke show that Evergy Metro's AMI investments made up 7.45% of its total PISA spend in 2020, while Evergy West's AMI investments made up 12.87% of its total PISA spend in 2019. *Id.* at pg. 42 ln. 18 – pg. 43 ln. 2.

There is nothing in RSMo. section 393.1400 that expressly addresses what should happen if the statutory limits on PISA spending are exceeded. However, It is well established that the "[t]he primary rule of statutory interpretation is to

effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language." *Verified Application & in re Liberty Energy (Midstates) Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520, 524 (Mo. 2015). In this case, the statutory language limiting PISA spending on AMI meters on a yearly basis clearly expresses the legislature's intent to set the prudence standard for the level of PISA investment that may be made for AMI meters on a yearly basis. For a utility to exceed the statutory limitations would therefore constitute *de jure* imprudence.

Evergy appears to have exceeded the PISA legislation limits on AMI investments directly as a result of its decision to replace existing AMI meters (which were largely fully installed by the end of 2016) with the new, second generation of AMI meters with service disconnect features. *Compare* (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 8 ln. 21 – pg. 9 ln. 2, ER-2022-0129, EFIS Item No. 556; *and* Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 14 ln. 15 – pg. 15 ln. 1, ER-2022-0130, EFIS Item No. 570), *with* (Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 42 ln. 18 – pg. 43 ln. 2, ER-2022-0129, EFIS Item No. 558; *and* Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 42 ln. 18 – pg. 43 ln. 2, ER-2022-0130, EFIS Item No. 572). The Commission should find this decision to exceed the statutory limit as just one more factor for why the Company's replacement of existing AMI with disconnect capable AMI meters was and is imprudent.

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Central Nebraska Public Power and Irrigation District (“CNPPID”) hydro purchased power agreement (“PPA”)

Issues Addressed:

V. Fuel Adjustment Clause (“FAC”)

1. What are the base factors for EMM and EMW?

a) Should the cost of the Central Nebraska Public Power and Irrigation District (“CNPPID”) hydro purchased power agreement be included in the FAC base factor calculation for Evergy Metro? (Metro Only)

VI. Fuel and Purchased Power

D. How should the net cost of the Central Nebraska Public Power and Irrigation District (“CNPPID”) hydro purchased power agreement (“PPA”) be treated?

1. Should a normalized cost be included in the calculation of the fuel and purchased power costs of Evergy Metro’s revenue requirement?

2. Should a normalized cost be included in the Evergy Metro fuel adjustment clause (“FAC”) base factor calculation?

3. Should the actual CNPPID hydro PPA costs be included in Evergy Metro’s actual accumulation period FAC costs?

Argument:

The issues related to the CNPPID hydro PPA span across two different sections in the list of issues and touches several sub-parts in each. Fortunately, the OPC can simplify the situation, and these issues (several of which overlap), with a single position: the costs and revenues associated with the CNPPID hydro PPA should not be included in the revenue requirement, calculation of the FAC base, and Evergy Metro’s actual FAC costs in future accumulation period. (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 ln. 5 – pg. 9 ln. 2, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 ln. 5 – pg. 9 ln. 2, ER-2022-0130, EFIS Item No. 567). This single position, which can be even further simplified to state just: Evergy Missouri Metro customers should

not pay any portion of the costs of the CNPPID hydro PPA, resolves all the outstanding issues to be addressed on this matter in one fell swoop.

The basis for the OPC's position is equally as simple: Evergy Metro entered into this PPA to meet the renewable energy standards imposed by the State of Kansas. *Id*. The energy cannot be used to meet Evergy Metro's Missouri customers' RES requirements and the capacity is not necessary to meet the SPP resource adequacy requirement. *Id*. Moreover, Evergy can fully recover the cost of the PPA from its Kansas customers under existing Kansas law and the CNPPID hydro PPA contract will almost certainly expire well before the beginning of Evergy Missouri's next rate case. Given all of these factors, and based on the well-established cost causation regulatory principle, Evergy Metro's Missouri customers should not have to pay for this PPA. *Id.* The OPC will walk through each of these points separately.

Review of the applicable legal/regulatory framework

Before going any further into the analysis for this issue, it is first necessary to consider the proper legal or regulatory framework that the Commission should be using. In this case, that proper legal or regulatory framework consists simply of the application of the cost causation principle. The cost causation principle is a regulatory principle that states that costs should be borne by those who cause them to be incurred. Tr. Vol 13, pg. 943 lns. 17 – 24. This principle is one that the Missouri Public Service Commission has ascribed to in the past. *Id*. at pg. 943 ln. 25 – pg. 944 ln. 3. Therefore, in order to determine who should pay for the CNPPID hydro PPA, the

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Commission needs to ask the simple question: "who caused the CNPPID hydro PPA costs to be incurred?"

The CNPPID hydro PPA was entered into to meet the renewable needs of the State of Kansas

In this case, it is extremely easy to determine who caused the CNPPID hydro PPA costs to be incurred. As the OPC's witness Ms. Lena Mantle explained:

> Q. What is the NPPID hydro PPA?
>
> A. This is a costly purchased power agreement Kansas City Power & Light Company ("KCPL") n/k/a Evergy Metro entered into in 2014 to meet the renewable energy standards ("RES") requirements of the State of Kansas.

(Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 15, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 15, ER-2022-0130, EFIS Item No. 567). The fact that the CNPPID hydro PPA was entered into in order to meet renewable energy requirements set by the state of Kansas was further confirmed by the Staff of the Public Service Commission. Tr. Vol 13, pg. 945 ln. 21 – pg. 946 ln. 1; pg. 959 lns. 9 – 14. Finally, if there is any doubt as to the accuracy of this claim, one need only consider the Company's own response to the OPC's data request for "all documentation regarding the initial decision to enter into contracts for hydro power." (Exhibit No. 333 - Data Request 8002 (Public and Confidential Attachments), pg. 1, ER-2022-0129, EFIS Item No. 583; Exhibit No. 333 - Data Request 8002 (Public and Confidential Attachments), pg. 1, ER-2022-0130, EFIS Item No. 597). The simple answer found in the Company's rather long response is that "The CNPPID hydro

facility qualified as a renewable energy resources under Statute K.S.A 66- 1257." *Id.* at pg. 2. There can be absolutely no doubt then that the CNPPID hydro PPA was entered into in order to meet renewable energy requirements set by the state of Kansas and was therefore entered into to serve Kansas customers.

The PPA is not needed to serve Evergy Missouri Metro

Having already addressed the fact that the CNPPID hydro PPA was entered into in order to meet renewable energy requirements set by the state of Kansas, it should be clear why, under the cost causation principle, the costs of the CNPPID hydro PPA should only be borne by Kansas customers. However, in order to fully put this issue to rest, the OPC will also examine whether there is any reason for Missouri customers to need this PPA as well. The answer is an unequivocal no.

To begin with, it is important to understand that this Hydro PPA "cannot be used to meet the Missouri RES statutes." (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 15 – 16, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 15 – 16, ER-2022-0130, EFIS Item No. 567; Tr. Vol. 13. Pg. 986 lns. 20 – 23). This is because the generators at the site are 16 MW and Missouri statute only allows generators less than 10 MW. Tr. Vol. 13. Pg. 986 lns. 16 – 20. Not only is the CNPPID hydro PPA not capable of being used to meet Missouri RES compliance, the capacity of the CNPPID hydro PPA "is not needed for Evergy Metro to meet the SPP resource adequacy requirement." (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 16 – 18, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M.

Mantle, pg. 6 lns. 16 – 18, ER-2022-0130, EFIS Item No. 567). The CNPPID hydro PPA is also not needed to meet Evergy Metro customer's load requirements as well. Tr. Vol. 13 pg. 986 ln. 24 – pg. 987 ln. 1. Therefore, "the PPA is not needed to serve Missouri customers." Tr. Vol. 13. Pg. 960 ln. 7.

In addition to not being needed to serve Missouri Customers, the PPA offers no benefits to Missouri customers. This was confirmed by the OPC's witness during the evidentiary hearing. Tr. Vol. 987 lns. 2 – 5 ("Q. Do you know if there are any benefits to Missouri customers based on the Nebraska hydro PPA? A. No. There are no benefits that I can think of."). It was further confirmed by the witness for the Staff. Tr. Vol. 13 pg. 959 lns. 19 – 20 ("[S]taff in its review found no benefits to Missouri customers for this PPA."). This simple fact can be even *further* verified by an examination of the fuel runs.

During the evidentiary hearing, the witness for Staff was asked by Evergy if Staff had replaced the CNPPID hydro PPA in their fuel run models. The witness responded: "I don't believe there was a replacement [In Staff's fuel models] nor do I think there's a need for a replacement if the PPA is not needed to meet customer load in Missouri." Tr. Vol. 13 pg. 960 lns. 23 – 25. This was further verified through the OPC's discussion with the Staff witness who developed the fuel model. That discussion showed that even if the CNPPID Hydro PPA is completely removed from Staff's fuel run, Evergy Metro would still have generation in excess of its load requirements. Tr. Vol. pg. 977 lns. 13 – 17. As such, Evergy "can completely remove the hydro PPA mWh and still have enough load or generation to meet its load

requirements[.]" Tr. Vol. pg. 978 lns. 2 – 6. This matter is completely beyond dispute. As Staff's witness succinctly summarized while on the stand, "[t]he PPA is not needed to serve load. If the company chooses to serve Missouri customers with that PPA, that's their choice, but it's not needed to serve Missouri customers." Tr. Vol. 13 pg. 961 lns. 9 – 12.

The CNPPID hydro PPA will most likely end before Evergy Metro's next rate case

"[U]nder Missouri Law, an electric utility is required to return to the Commission for a rate case every four years in order to maintain its FAC[.]" Tr. Vol 13, pg. 951 lns. 10 - 14. As a result, "the general operating standard of the Commission Staff when, for example, choosing amortizations is to assume that electric utilities will stay out over a four-year period[.]" Tr. Vol 13, pg. 951 lns. 15 – 20. The CNPPID Hydro PPA contract will expire on December 31, 2023. Tr. Vol 13, pg. 951 lns. 3 – 9. Consequently, "[i]f this contract is included in rates . . . it will end before the expiration of a four-year period." Tr. Vol 13, pg. 951 lns. 21 – 24. If the contract ends "before the expiration of a four-year period and is included in rates, [Evergy Metro] will collect money [for costs] that it is no longer incurring." Tr. Vol 13, pg. 951 ln. 25 – pg. 952 ln. 4.

It is possible that Evergy might seek to rebut this point by arguing that if the CNPPID hydro PPA is no longer active, then the decrease in costs will be reflected as an offset to the Company's fuel and purchase power costs and thus ultimately reduce the FAC passed on to customers. To that end, the OPC offers this explanation by Ms. Lena Mantle as to how customers will still be harmed even if the CNPPID hydro PPA

is included in revenue requirement but then does not get recovered through the FAC for one reason or another:

> Evergy Metro would recover the normalized cost of the PPA through increased base rates and therefore increase customers' bills. Including the CNPPID hydro PPA in the calculation of the FAC base factor would result in a higher base factor.
>
> Because the CNPPID hydro PPA is a cost, the absence of the PPA costs in the calculation of the actual FAC costs in the accumulation period would, everything else being consistent with the costs included in base rates, result in a negative FAC rate with Evergy getting to keep 5% of what was "saved," *i.e.* the cost of the CNPPID hydro PPA that was allocated to Evergy Metro in this case. **While Evergy Metro's customers would not be paying for the entire CNPPID hydro PPA cost, they would be paying for 5% or over $150,000 a year**.

(Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 7 lns. 17 – 26, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 7 lns. 17 – 26, ER-2022-0130, EFIS Item No. 567 (emphasis added)). There is no good reason to require Evergy Missouri customers to pay Evergy $150,000 a year for a PPA that is both unnecessary and offers customers no benefit.

The CNPPID PPA is not in the money

During the evidentiary hearing, there was discussion about whether the CNPPPID hydro PPA was "in the money." "In the money would mean that when it was run, the cost for that MWh was less than the revenues received from SPP for that MWh." Tr. Vol. pg. 987 lns. 16 – 18. The witness for Staff expressed significant doubt as to whether or not the PPA did indeed meet this criteria. Tr. Vol. 13 pg. 961 lns. 19 – 22 (Q. Fuel prices have been going up. Is the hydro PPA ever in the money? A. At the contract price as currently set, I doubt it. If it is, it will be very seldom.").

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Witness for the OPC went one step further and confirmed this. Specifically, the OPC's witness Ms. Lena Mantle looked at the "12 months ending May 31, 2022, which was the true-up date in this case." Tr. Vol. 13 pg. 987 lns. 21 – 23. She confirmed that the PPA was not in the money during this period. Tr. Vol. 13 pg. 987 ln. 24 – pg. 988 ln. 3. More directly, this following exchange took place:

> "Q. Ms. Mantle, do the costs of this PPA exceed the revenues that come from the PPA?
>
> A. In every month in the true-up period ending May 2022, the costs were greater than the revenues."

Tr. Vol. 13 pg. 990 lns. 13 – 16. This once again confirms that the CNPPID hydro PPA is a detriment to Missouri customers and offers no benefits. *See* Tr. Vol. 13 pg. 960 lns. 5 – 6. ("[I]f the costs are exceeding revenues, there's no benefit.").

PPA can be recovered from Kansas

In 2009 the state of Kansas enacted a renewable energy standard under K.S.A. § 66-1258. (*See* Exhibit No. 333 - Data Request 8002 (Public and Confidential Attachments), attachment 2 pg. 2, ER-2022-0129, EFIS Item No. 583; Exhibit No. 333 - Data Request 8002 (Public and Confidential Attachments), attachment 2 pg. 2, ER-2022-0130, EFIS Item No. 597). The State of Kansas further enacted a law (K.S.A. § 66-1259) that required the Kansas Corporation Commission to "allow affected utilities to recover reasonable costs incurred to meet the new renewable energy resource requirements required in the renewable energy standards act." *Id.* at pg. 3. While the renewable energy standard itself was repealed in 2015, the State of Kansas still updated § 66-1259 to require the Kansas Corporation Commission to "allow

affected utilities to recover reasonable costs incurred or committed to be incurred as a result of compliance with the renewable energy resource requirements required in K.S.A. 66-1258, prior to its repeal." K.S.A. § 66-1259. As has already been established, the CNPPID Hydro PPA was entered into to meet the statutory requirements of K.S.A. § 66-1258. (*See*, *e.g.*, Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 15, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 15, ER-2022-0130, EFIS Item No. 567). Moreover, the CNPPID Hydro PPA came into effect January 1, 2014 at 12:01 a.m. Tr. Vol. 13 pg. 951 lns. 3 – 9. Therefore, the PPA would have been "incurred as a result of compliance with the renewable energy resource requirements required in K.S.A. § 66-1258, prior to its repeal[,]" which, again, occurred in 2015. K.S.A. § 66-1258. Under the plain language of the Kansas statute, the Kanas Corporation Commission would therefore be required to allow Evergy Metro to recover reasonable costs incurred or committed to be incurred in relation to the CNNPID Hydro PPA. This was confirmed by witness testimony during the hearing. Tr. Vol 13 pg. 966 lns. 8 – 10 ("Q. To your knowledge, they can fully recover the cost of this PPA in Kansas, correct? A. That's my understanding."). Consequently, denying recovery of any portion of the Hydro PPA in Missouri will in no way harm Evergy Metro as the Company can fully recover the cost of the PPA in Kansas. *Id.*

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Summation

Evergy Metro entered into the CNPPID Hydro PPA to meet the renewable energy standards imposed by the State of Kansas. Under the well-established cost causation regulatory principle, this means that Evergy's Kansas customers should pay for this PPA. Further, the PPA is neither needed nor legally cable of meeting Evergy Metro's Missouri's RES requirements and the capacity is not necessary to meet the SPP resource adequacy requirement. Then there is the fact that the PPA is already losing money and will almost certainly expire well before the beginning of Evergy Missouri's next rate case. This means that if the CNPPID hydro PPA is included in rates, Evergy Missouri customers will be paying for a PPA that offers them no benefits whatsoever. Finally, it is indisputable that Evergy can fully recover the cost of the PPA from its Kansas customers under existing Kansas law. Given all of these factors, there is absolutely no rational basis for the CNPPID Hydro PPA to be included either in the Company's revenue requirement, calculation of the FAC base, or actual FAC costs in future accumulation period and should therefore be exclude from all three. (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 8 lns. 9 – 12, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 8 lns. 9 – 12, ER-2022-0130, EFIS Item No. 567).

Plant in Service Accounting ("PISA") deferral

Issues Addressed:

V. Fuel Adjustment Clause ("FAC")

26. If the Commission allows deferment of the FAC costs in Case No. ER-2023-0011, should that deferral be recovered in this rate case?

a) If yes, how would it be treated?

Argument:

This issue is a rather odd one because it depends on the Commission's decision in a separate case. A summary of that case and its interplay with this one can be found in the testimony of Ms. Lena Mantle. (Exhibit No. 304 - True-Up Direct Testimony of Lena M. Mantle (Public and Confidential), pg. 2 ln. 2 – pg. 3 ln. 3, ER-2022-0129, EFIS Item No. 554; Exhibit No. 304 - True-Up Direct Testimony of Lena M. Mantle (Public and Confidential), pg. 2 ln. 2 – pg. 3 ln. 3, ER-2022-0130, EFIS Item No. 568). There is little that need be said in regards to this case other than to reiterate the statements made by OPC's witness in testimony:

> Q. If the Commission defers these costs, what is your recommendation on how this 10 deferral should be treated?
>
> A. First, I want to reiterate that the Commission should not defer these costs because the inclusion of these costs will not result in Evergy West meeting the PISA rate cap. Evergy West's request is just an attempt to get around a customer protection created by the Missouri legislature. If the Commission does allow the deferral, it should order the costs be put into a regulatory asset account that is amortized over 4 years with interest at Evergy West's 4-year bond rate. These costs should still be reviewed for prudency in the FAC prudence review for this time period.

(Exhibit No. 304 - True-Up Direct Testimony of Lena M. Mantle (Public and Confidential), pg. 3 lns. 9 – 17, ER-2022-0129, EFIS Item No. 554; Exhibit No. 304 - True-Up Direct Testimony of Lena M. Mantle (Public and Confidential), pg. 3 lns. 9

– 17, ER-2022-0130, EFIS Item No. 568). The rationale for why the deferral should be dealt with in this case as opposed to a later rate case is simply this:

> The fuel and purchased power costs Evergy West is requesting be deferred were incurred December 1, 2021 through May 31, 2022. The true-up period for this case is through May 31, 2022. If the Commission agrees that these costs are to be deferred, then the deferral should be done in this case.

(Exhibit No. 304 - True-Up Direct Testimony of Lena M. Mantle (Public and Confidential), pg. 3 lns. 5 – 8, ER-2022-0129, EFIS Item No. 554; Exhibit No. 304 - True-Up Direct Testimony of Lena M. Mantle (Public and Confidential), pg. 3 lns. 5 – 8, ER-2022-0130, EFIS Item No. 568). However, as Ms. Mantle's previous excerpt explained, the OPC's position is that the Commission should **not** order the deferral requested by the Company in case ER-2023-0011. *Id.* at lns. 11 – 12. If the Commission ultimately agrees with the OPC and Staff in case ER-2023-0011, then this issue is rendered moot and may be disregarded.

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Rate Design and Class Cost of Service

Issues Addressed:

XVIII. Rate Design/Class Cost of Service

A. What is the appropriate allocation of revenue requirement among the rate classes of each company?

B. What are the appropriate rate schedules, rate structures, and rate designs for the non-residential customers of each company?

D. What are the appropriate rate schedules, rate structures, and rate designs for the residential customers of each utility?

1. What is the appropriate residential customer charge?

E. What measures are appropriate to facilitate implementation of the appropriate default or mandatory rate structure, rate design, and tariff language for each rate schedule?

F. Should the Company's proposed Time of Use rate schedules be implemented on an opt-in basis?

G. Should the Staff's proposed Time of Use rate schedules be implemented on a mandatory basis?

K. Should the Commission order Evergy to meet with stakeholders related to its rate modernization plan within 180 days after the effective date of rates in this case?

L. Should Evergy work to improve the education of its customers regarding the billing options and rate plans it has currently?

Argument:

The Issues related to rate design can be broken down into three distinct categories. The first are the non-time of use ("TOU) rate issues found in sub-parts A, B, and D. The second category are the TOU specific issues of E, F, and G. Finally, there are the rate design implementation and improvements-moving-forward related issues found in K and L. The OPC will present its argument for this section broken down into these three categories.

Non-TOU rate design issues

Sub-parts A, B, and D of the list of issues under Issue XVIII (Rate Design/Class Cost of Service) address all components of the rate design for residential and non-residential customers save for the implementation of either mandatory or discretionary time of use rates. The fortunate news is that the vast majority of these issues have already been resolved by the *Stipulation and Agreement Regarding Class Revenue Allocation* approved by the Commission. (*See* Stipulation and Agreement Regarding Class Revenue Allocation, ER-2022-0129, EFIS Item no. 303; Stipulation and Agreement Regarding Class Revenue Allocation, ER-2022-0130, EFIS Item no. 321). Specifically, this stipulation resolved the revenue allocations by class for both residential and non-residential customers. *Id*. This clearly resolves sub-part A in its entirety. Sub-parts B and D are also fairly straightforward to resolve, provided that they depend upon the Commission's answer to sub-parts E, F, and G below. The only other component that the Commission needs to address is the issue of the customer charge for residential customers (sub-part 1 under D).

Before reviewing the facts related to the residential customer charge, it is best to quickly review what the customer charge is. The customer charge is "[a] fixed charge to customers each billing period, typically viewed as intended to cover metering, meter reading and billing costs that do not vary with size or usage." (Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 26 lns. 11 – 13, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 26 lns. 11 – 13, ER-2022-0130, EFIS Item No. 571). It is "[a]lso

known as a basic service charge or standing charge." *Id*. OPC witness Dr. Marke provided more background for this charge and what costs should be recovered through it:

> To state the obvious, customer-related costs should be recovered through the customer charge. These should be costs sensitive to connecting a customer irrespective of the customer's load (e.g., meter, billing). That is, customer-related costs exist even when kW demand and kWh are zero. When having one or more customers on the system raises the utility's cost regardless of how much the customer uses (billing is an example), then a fixed charge to reflect that additional fixed cost the customer imposes on the system makes perfect economic sense. Utilities can justify a customer charge to recover these basic costs because they are directly related to the number of customers receiving an essential monopoly service. The idea that each household has to cover its customer-specific fixed cost also has obvious appeal on grounds of equity. This is contrasted with system-wide "fixed" costs, such as maintaining the distribution network, which do not change if one customer were to drop off the system.

Id. at pg. 26 ln. 20 – pg. 27 ln. 8. Evergy's current customer charge is $11.47, with various proposals to increase it being made in this case. *Id*. at lns. 18 – 19. These proposals should be rejected and the customer charge kept where it currently is. *Id*. at pg. 28 ln. 28 – pg. 29 ln. 1.

In order to understand why the customer charge should not be changed, it is important to understand what effect the customer charge has on different types of customers. As the OPC's witness explained:

> An increase to the customer charge positively impacts above-average use customers and negatively impacts below-average use customers. On the other hand, a decrease to the customer charge positively impacts below-average use customers and negatively impacts above-average use customers. Stated differently, "in general," a lower customer charge tends to favor, low-income customers, renters, and customers who have

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> invested in energy efficiency and solar (or plan on investing in those items). In contrast, a higher customer charge favors affluent customers and electric space-heating customers. It also provides greater revenue certainty for the utility.

Id. at pg. 27 lns. 11 – 18.

> However, beyond low and fixed income ratepayers, the next obvious subset of ratepayers who are unfairly penalized by an increased customer charge are those who have invested time and money in being efficient, conservative, and environmentally responsible. This is because increased customer charges offset the financial savings of any previous efficiency actions and erode the incentive to improve appliances or better insulate their home moving forward. Ratepayers who are considering making investments in energy efficiency measures will have longer payback periods over which to recoup their investments. Increasing the customer charge distorts these pricing estimates and would cancel out expected savings from customer's investments in energy efficiency programs to date. This same logic applies to distributive generation (rooftop solar). If a ratepayer considers making a large-scale capital investment they should be cognizant of the risk involved with that purchase. In some ways, this is no different than any other long-lived investment. For example, if you pay extra for an electric car, you run the risk that gas prices fall after you buy the car and your investment will not pay off. What's different about distributed generation or energy efficiency is [that] much of the risk is subject to Commission orders. With most financial risks, there's a chance the underlying prices will go up or down 5% but a much smaller chance that they'll change by over 50%. However, this is exactly the sort of risk ratepayers who have elected to become more efficient are faced with whenever a rate case docket is opened. If the residential customer charge is raised, ratepayers who have made investments in energy efficiency or distributed generation will have longer payback periods over which to recoup their investments if any of those fixed monthly customer charges were accepted. Despite the increased customer charge tactic largely being abandoned by utilities throughout the country, ratepayers who made good-faith investments are still exposed to future regulatory rate design departures or rulemaking decisions that could have an adverse impact on their past decisions to proactively take control of their bills.

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Id. at pg. 27 ln. 23 – pg. 28 ln. 22. As explained by the OPC's witness, increasing the customer charge not only directly harms low-income customers, it also disincentivizes energy efficiency polices and distributed generation like rooftop solar. *Id*. at pg. 28 ln. 24 – pg. 29 ln. 3. To the extent that the Commission wishes to promote these goals, the Commission should not order a change in the customer charge. *Id*.

Time of Use ("TOU") rates

There are currently two different proposals before the Commission relating to TOU rates. The first is the Company's proposal for "several opt-in TOU rates with various price differentials." *Id*. at pg. 13 ln. 3. The second proposal is the one offered by Staff who is advocating for "a mandatory low-differential or 'training wheels' TOU rate with an optional rate schedule with real time price variation for customers better educated on the risks of the energy market." *Id*. at lns. 6 – 8. "For other customers (excluding lighting, Nucor, certain data centers and Real Time Price Service customers) Staff is recommending a summer off peak discount (midnight to 6am) and summer on peak premium (4 pm to 8 pm) at -$0.01 and $0.01 respectively." *Id*. at lns. 8 – 11. The OPC did not offer its own proposal because it anticipated the recommendation of Staff and knew it would support that recommendation. *Id*. at lns. 16 – 19. Because these two proposals are obviously so closely related, the OPC will review them together.

Evergy began laying the groundwork for TOU through the deployment of AMI meters dating back to 2014. *Id*. at pg. 14 ln. 22. In this sense, "Evergy has arguably had eight years to prep their customers for the value proposition of TOU rates while

they were earning a healthy return on their investments that were sold on the basis that customers would have TOU rates." *Id.* at pg. 14 lns. 23 – 25. The actual practical implementation of TOU rates, however, has sadly been rather lacking. Evergy has primarily just focused on performing numerous studies on the benefits of TOU rates. The Company's 2021 *Evergy Missouri Metro & Evergy Missouri West TOU Rate Design Report*, for example, represents "the 11th iteration of ratepayer-funded TOU third-party study Evergy has conducted for Missouri to date" while "a 12th study, the Evergy TOU EM&V study[,]" would go on to join it later that same year.[8] *Id.* at GM-2, PDF pg. 5 n. 5.

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[8]An exact listing of the studies performed was included in the *Public Counsel's Comments on Evergy Missouri Metro & Evergy Missouri West's Time-Of-Use Rate Design Report* that was included as attachment GM-2 to the rebuttal testimony of Dr. Geoff Marke:

> specific third-party studies include the following (which does not include the many 3rd party customer surveys Evergy has charged to ratepayers):
>
> 1. Electric Power Research Institute (EPRI)-Matching Electric Service Plans to KCP&L's Strategic Objectives (EPRI-ESP)—EPRI Supplemental Research Project, 2012-2014;
> 2. KCP&L SmartGrid Residential Time-of-Use Pilot (SGDP-TOU) – a component of the KCP&L Division of Energy SmartGrid Demonstration Project, 2010-2015;
> 3. EPRI-KCP&L Residential Time-of-Use Impact Study (EPRI-TOU) – EPRI Smart Grid Demonstration Project Analysis, 2010-2015;
> 4. ERPI-Measuring Customer Preferences for Alternative Electricity Service Plans (EPRI-ESP) – EPRI Supplemental Research Project, 2014-2015;
> 5. KCP&L 2016 Demand Side Management (DSM) Potential Study (DSM-TOU) – Applied Energy Group, 2016- 2017;
> 6. BMcD-KCP&L and GMO Residential Rate Design Strategy Study (BMcD-TOU)- Burns & McDonnell Engineering Company, 201718
> 7. KCP&L Greater Missouri Operations Company Seasonal Rate Structure Study December 12, 2017 per Commission Report and Order in Case No. ER-2016-0156;
> 8. KCP&L Block Rate Study December 8, 2017 per Commission Report and Order in Case No. ER-2014-0370 and ER-2016-0156;
> 9. KCP&L Greater Missouri Operations Company Time of Use Rate Study Project No. 97119 Final Report 12/13/2017 per Commission Report and Order in Case No. ER-2016-0156
> 10. KCP&L 2020 Demand Side Management (DSM) Potential Study (DSM-TOU) – Applied Energy Group,

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In addition to the plethora of studies, Evergy did at least run "a successful pilot program in which approximately 1% of its customers have participated in to date." *Id*. at pg. 12 lns. 20 – 21. "The pilot had the desired effect of reducing on-peak consumption (4-8 pm) year round[.]" *Id*. at GM-2, PDF pg 5. Specifically, the Company found that "[p]articipating customers lowered their demand peak by 4 to 9% at the system coincidence peak" with general residential customers seeing a 5 to 10% lowered demand peak and spacing heating residential customers seeing a 3 to 6% reduction to their demand peak. *Id*. Based on these results, the short campaign has been a major success. *Id*. This is why it is all the more perplexing that Evergy has continued to resist default TOU rates.

Evergy's inability or rather unwillingness to move to offering default TOU rates has certainly been noted by various past and present members of this Commission. Several examples are listed here:

> "[Y]ou're spending a lot of money on AMI meters to get rid of meter readers, which is great. But if you're not going to use that technology, you could have went with the older AMR meters. And so if you're going to ask ratepayers to pay for that, then let's utilize the technology."

Commissioner Scott Rupp, Missouri Public Service Commission

> "I could not agree with you more in terms of the amount of money that ratepayers will pay for this technology, if we're not getting

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11. Evergy Missouri Metro & Evergy Missouri West: Time of Use Rate (TOU) Rate Design Case Report, June 15, 2021 Case No: EO-2021-0349 & EO-2021-0350
12. Guidehouse Evaluation, Measurement and Verification ("EM&V") of Evergy TOU Pilot December 31, 2021

(Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), GM-2, PDF pg. 5 n. 5, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, GM-2, PDF pg. 5 n. 5, ER-2022-0130, EFIS Item No. 571).

> something for that technology, if we’re not getting something for that technology, then that’s inefficient use of ratepayer dollars.”

Former Chairman Daniel Hall, Missouri Public Service Commission

[. . .]

> “I think there's an argument that can be made that the ratepayers are paying for these AMI meters and it is the shiny new toy to put on the side of the house, but if you’re not having time of use rates, you're not getting the value out of it so maybe the penalty for not hitting your goals is to remove the AMI meters from rate base because there's no reason to have the ratepayers pay for it, you know.”

Commissioner Scott Rupp, Missouri Public Service Commission

> “I must say I would not be terribly shocked sitting somewhere else watching what happens here two years from now that there’s some other reason why you're not going to get mandatory time of use rates on the books.”

Former Chairman Daniel Hall, Missouri Public Service Commission

[. . .]

> “And the fact that we've had 13 studies, 11 studies, however many, all of us on the Commission we're in the legislature they all know the answer that when you don't want to deal with something, you study it. And Bill Kenney is not here, but this is the most like picturesque, quintessential issue of kicking the can down the road that we have ever seen here in the Commission. Multiple years, 13 studies, two rate cases, open dockets and hearings and things of that nature and here we are at the same thing and now we're talking about not even doing as much as what we did six months ago, a year ago with the other side of the state. So I guess my question is more of a comment. Thank you for bringing back the big picture and helping us realize the great job that the Company did do in achieving these metrics with their program, and they've proven that they can do it, they've proven that the customers will respond. It's time to just let them run and let them run with this. ”

Commissioner Scott Rupp, Missouri Public Service Commission

Id. at pg. 11 ln. 5 – pg. 12 ln. 18. Given these comments, it should be obvious why the witness for the OPC believed the "'writing was on the wall' and has been for some time" when it came to TOU rates. *Id*. at pg. 13 ln. 16. This begs the question, why then is Evergy still choosing to resist the Staff's default TOU rates?

Evergy's position in this case appears dependent on convincing this Commission that the two TOU rate proposals offered are mutually exclusive. They are not. There is nothing preventing the Commission from ordering default TOU rates with low differentials using the "training wheels" approach described by the OPC's witness Dr. Marke **and** allowing the Company to offer its higher differential TOU option as well. The Commission needs to keep this consideration in mind and understand what the purpose of the proposed low differential rate is.

The purpose of having a low differential "training wheels" style default rate is, as the name implies, to introduce the concept of TOU rates to customers and educate them on its benefits and operation. As Dr. Marke explained, Evergy had agreed in its last general rate case (4 years ago) to work on educating its customers regarding TOU rates. *Id*. at pg. 14 ln. 25 – pg. 15 ln. 3. Since then, Evergy has spent "over $3M dollars on undefined customer education that has resulted in no party being confident that Evergy customers could handle larger price differentials then what Staff is proposing in this case on a system-wide basis." *Id*.

> Worse, there is very little hope that we will be in a place to move beyond Staff's proposed training wheel approach absent explicit Commission directive to do so. In effect, the Company can continue to kick the can down the road on TOU rates indefinitely by dragging its feet on

> ineffective or half-hearted customer education and re-litigate everything all over again in the next rate case after stakeholders look at the 14th (or more) ratepayer-funded study on Evergy TOU rates.

Id. at pg. 15 lns. 4 – 9. This is why the OPC is supporting the "training wheels" approach. It is "a reasonable path forward given the present circumstances in which Evergy customers are not prepared to experience large differentials." *Id*. at pg. 15 lns. 12 – 13. Moreover, "The training wheels approach was [already] agreed to among all parties for both Ameren Missouri and Empire District Electric[.]"*Id*. at pg. 13 lns. 16 – 19. There is simply no reason for this Commission to deviate from the path that two out of the three investor owned electric utilities in this State have already started down as a way of ensuring that all Missouri customers are prepared for a future with TOU rates.

For all the reasons laid out herein, the Commission should, at a minimum, order the TOU rate design proposal developed by Staff. *Id*. at pg. 15 lns. 11 – 13. This should be treated as, and applied as, the default rate for all residential customers. *Id*. If the Commission so choses, they can also approve a higher differential optional TOU rate as well like the one proposed by the Company. If the Commission does order Evergy to offer a higher differential TOU rate, though, then it should include two important *caveats*. First, as already stated, the higher differential rate should be optional simply because "Evergy customers are not prepared to experience large differentials." *Id*. Second, the Commission should in no way approve Evergy's request to include a promotional cost for its TOU rate. As Staff witness Ms. Sarah Lange explained on the stand:

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> Evergy is requesting to defer up to $150 per participant, but that $150 is determined by the company net of any savings realized by the company. And I'm not aware of any further detail on how that calculation would be done, who would do it, when they would do it. It appears from that testimony that the company's intent is that they would like the Commission to find it prudent to lose up to -- I'm sorry, more than $150 per TOU participant on their opt-in TOU rates.

Tr. Vol. 8 pg. 752 lns. 14 – 23. These are unnecessary costs that the Company should not need, given that it has already "managed to spend over $3M dollars on undefined customer education" related to TOU rates. *Marke Rebuttal* pg. 15 ln. 1. On that same note, the Commission should also disallow $1 million in program/customer education costs from Evergy's rates "for both Evergy Metro and Evergy West in recognition of Evergy's failure to comply with the terms of the non-unanimous stipulation and agreement" entered into in Evergy's last rate case related to this failure to educate. *Id*. at pg. 15 lns. 14 – 16. Finally, and most importantly, the Commission again needs to order Evergy to file in its next rate case a proposal for higher default TOU differentials or else risk never moving beyond the "training wheels" approach proposed by Staff, as explained by Dr. Marke. *See Id*. at pg. 15 lns. 4 – 9.

As one final point, and in answer to sub-section E of the list of issues for rate design, the OPC notes the recommendation of its witness Dr. Geoff Marke with regard to how to implement default TOU rates:

> Finally, I recommend that the Commission order Evergy to submit an open-source competitive RFP within thirty days following rates going into effect in which the Company will request a third-party consulting firm to develop and execute a marketing campaign to educate Evergy Missouri customers on the overall value proposition of TOU rates and to inform customers that larger differential rates will be going into effect for all customers following the conclusion of Evergy's next rate case. This

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> education campaign will begin no later than the day the Company files its next 60-day notice. The open-source competitive RFP will be vetted with input from the Staff and OPC and the competitive bid winner will be selected based on a majority vote between the Company, Staff and OPC.

(Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 15 lns. 17 – 25, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 15 lns. 17 – 25, ER-2022-0130, EFIS Item No. 571). As already expressed numerous times, Evergy has previously failed to diligently work to educate its customers about TOU rates. *See Id.* at pg. 15 lns. 11 – 13. This proposal will hopefully alleviate that issue moving forward. Therefore, whatever the Commission ultimately decides to do with regard to TOU rates, the Commission should also order the Company to undertake an open-source competitive RFP for a consulting firm to develop and execute a marketing campaign to educate Evergy Missouri customers on the overall value proposition of TOU rates as proposed by Dr. Marke.

Rate design implementation and improvements-moving-forward

The last two sub-parts (K and L) in the list of issues for rate design have to do with what steps the Company should take to design rates and improve customer education moving forward. OPC's witness Ms. Lisa Kremer explained the need for taking such steps quite clearly:

> All "choices" presented to regulated customers by regulated utilities should be crystal clear and transparent to the customer and thoroughly vetted by Missouri regulators to ensure they appropriately serve the customer. Further, there should be no, or very limited, difficulty for the customer to understand what is being offered to them and the options they have. The utility has an obligation to facilitate for the customer those "choices" that should ultimately be in the best interest of its

> customers. The regulated utility has a captive customer base by which it will be compensated for prudently incurred expenses and an opportunity for a Commission determined rate of return.

(Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 7 lns. 4 – 12, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 7 lns. 4 – 12, ER-2022-0129, EFIS Item No. 587). Unfortunately, Evergy has done a very poor job of educating its customers about its rate options and designs. In response to OPC data requests, the Company provided confidential customer survey material that indicated that "nearly **___ ** of customers surveyed '**____

____________________________________** *Id.* at lns. 24 – 28. This led Ms. Kremer to conclude that Evergy "has an opportunity and need to better educate its customers on the billing options and rate plans it has currently." For this reason, the OPC believes that the Commission should both (1) order Evergy to meet with stakeholders related to its rate modernization plan within 180 days after the effective date of rates in this case, and (2) work to improve the education of its customers regarding the billing options and rate plans it has currently.

Subscription Pricing

Issues Addressed:

XXIII. Pilot Programs

D. Subscription Pricing Pilot Program

1. Should the Commission approve the proposed Subscription Pricing Pilot Program?

2. Should the Commission grant Evergy's request for variances to Chapter 13.020 Billing and Payment Standards, which the Company states is needed to implement Evergy's proposed Subscription Pricing Pilot Program?

3. Should the Commission disallow costs related to consultant fees associated with Evergy's Subscription offering?

Argument:

The Commission should reject Evergy's request for a subscription pricing program and should further disallow the costs for the consultant Evergy hired to file testimony related to this program. Given the OPC's position, sub-parts 1 and 2 of this issue will be addressed together before addressing sub-part 3.

Evergy's request for a subscription pilot program should not be permitted

Evergy's request for a subscription pilot program should not be permitted for three distinct reasons. First, the subscription pricing proposed by the Company conflicts with several statutory provisions and is thus illegal. Second, the program is unnecessary if not outright harmful given that the primary goal of subscription pricing can already be achieved using existing rate mechanism and the plan, as proposed, would result in increased costs to participants. Third, subscription pricing is counter-productive in relation to Evergy's existing energy efficiency programs (like

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Evergy's MEEIA) in that subscription pricing entices increased energy usage. The OPC will discuss each of these three points separately.

Illegality of Subscription Pricing

The subscription pricing pilot program designed by Evergy is legally problematic for several reasons. The first is that it clearly contradicts the statutory prohibition against discriminatory rates. RSMo. section 393.130.3 states that "No . . . electrical corporation . . . corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." The Courts of Missouri have unambiguously found that this provision means "the Commission lacks statutory authority to approve discriminatory rates[.]" *State ex rel. City of Joplin v. PSC of Mo.*, 186 S.W.3d 290, 296 (Mo. App. W.D. 2005). In this case, the subscription pricing pilot would grant a substantial and unreasonable preference or advantage to participants and unreasonable prejudice or disadvantage to non-participants due to its interplay with the Company's existing riders. The rate would therefore violate the language of section 393.130.3 and the prohibition on discriminatory rates.

In order to understand exactly how the subscription pricing program results in a violation of section 393.130.3, it is first necessary to understand how the subscription pricing program operates in conjunction with Evergy's existing riders. It

is irrelevant which rider one considers in this matter because the same problem occurs for the Fuel Adjustment Clause (”FAC”) rider, the Missouri Energy Efficiency Investment Act (“MEEIA”) rider, or the Renewable Energy Standard Rate Adjustment Mechanism (“RESRAM”) rider. The question of how these riders interact with the proposed subscription pricing program was discussed during the hearing:

> Q. . . . As I understand it, and tell me if I'm correct, when the subscription pricing rate is set, the company will include all of the current existing riders like the FAC, the RESRAM, the [MEEIA] that are volumetric in nature as part of the rate, correct?
>
> A. It is my understanding the company will take that rate that is in effect at the time that the offer is made to the customer and multiply it by the normalized -- weather normalized usage of that customer for the prior 12 months grossed up by 5 percent and then apply that rate and then gross that resulting dollar amount up by up to 10 percent.
>
> Q. So if the FAC is increased after the customer gets on the subscription right, the subscription rate isn't subsequently changed to reflect the FAC increase?
>
> A. I don't believe it would be subject to change during that 12-month period. I do believe that customer's usage would, of course, flow into the FAC and any increased consumption they would have or change at the time of consumption they would have would impact current customers in that subsequent FAR adjustment.
>
> Q. So this is the point I wanted to make, I need to get this very clear, a customer on a subscription rate will not pay any part of a change in the FAC after their rate is set over the 12-month period that their rate is in effect?
>
> A. Yes. That customer would be insulated from the FAC rider changes, the [MEEIA] rider changes, the RESRAM rider changes and if a securitization charge is imposed or trued up during that time, they would be exempted from applicability of the securitization charge as well.

Tr. Vol. 10 pg. 574 ln. 1 – pg. 575 ln. 7. The key takeaway from this exchange is that a customer who chooses to take service under the subscription pricing program would be insulated from any changes in the FAC rider, the MEEIA rider, or the RESRAM rider. *Id*. However, the subscription pricing program has no mechanism to segregate the costs arising from the subscription pricing customer that would normally be recovered through those mechanisms. *Id*. As a result, the subscription pricing customer gets to shift a portion of the costs Evergy incurs to serve *them* onto all non-subscription pricing customers. This creates an obvious preference or advantage to participants and unreasonable prejudice or disadvantage to non-participants.

To fully drive this point home, consider the case of just the FAC. A subscription pricing participant who increases usage during the year, due to a cold winter for example, will directly contribute to increased fuel and purchase power costs incurred by the utility to serve that customer. *Id*. at pg. 574 lns. 13 – 21. Those increased fuel and purchase power costs would then flow through the FAC back to customers. *Id*. The subscription pricing participant, however, does not see their rates change to reflect the increase to the FAC. *Id*. So instead, the full cost gets recovered **only** from the other current customers. *Id*. Thus, we see two important results: (1) the subscription pricing participant receives a major preference or advantage because they do not have to pay any part of the increased fuel and purchase power costs that they helped contribute to, and (2) the non-participants suffer a major prejudice or disadvantage because they must now cover the full cost of the FAC increase including paying for any FAC cost increases caused by the subscription pricing participants.

This is clearly discriminatory in nature and thus is prohibited under Missouri law. *See*, *e.g.*, *State ex rel. City of Joplin v. PSC of Mo.*, 186 S.W.3d 290, 296 (Mo. App. W.D. 2005); *State ex rel. Laundry, Inc. v. Pub. Serv. Com.*, 34 S.W.2d 37, 45 (Mo. banc 1931).

Besides being illegally discriminatory, there is a second legal problem with the proposed subscription pricing program related to the newer securitization laws. In particular, section 393.1700 includes several provisions that require that the securitized utility tariff charge be "nonbypassable." For example, the securitization law required that any financing order issued by the commission include:

> A requirement that, for so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized utility tariff charges authorized under a financing order shall be **nonbypassable** and paid by **all** existing and future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules except for customers receiving electrical service under special contracts on August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this state

RSMo. § 393.1700.2(3)(c)d (emphasis added). This is an obvious problem because the proposed subscription pricing would unquestionably permit participating customers to bypass securitization charges:

> Q. So on that last point, I want to make sure that's clear, if a customer gets on the subscription rate and there isn't a securitization charge but a securitization charge is added to general rates after they get on the subscription rate, that customer won't be paying the securitization charge?

> A. That customer would be bypassing the securitization charge and they would also be bypassing changes in the future under that securitization charge.

Tr. Vol. 10 pg. 575 lns. 8 – 16. Because the proposed subscription pricing program would allow a customer to bypass a securitization charge that was put into place after the customer's rates were set, it would necessarily violate the statutory provisions of RSMo. section 393.1700. Because the subscription pricing pilot, as proposed, stands to violate both RSMo. section 393.130.3 and 393.1700, it is illegal and should be denied.

Unnecessary and harmful properties of the plan's design

To say that there are significant concerns regarding Evergy's subscription pricing programs design would be an understatement. Consider, for example, this excerpt from the list provided by the OPC's witness Ms. Lisa Kremer of the problems related to the proposed program:

> Customer detriment: from the Company's own words: "On average, customers are expected to pay more under subscription pricing than they otherwise could under the standard rate."
>
> [. . .]
>
> Substantial caution should be taken when comparing regulated electric service necessary for life, health, and safety to music streaming services, gym memberships, and cell phone plans. Such comparisons teeter on dis-service to captive customers that cannot choose nor abandon their electric provider in the same manner as a streaming service, gym, or cell phone service provider.
>
> Program "adders" (behavior usage adders, risk premium adders, and program cost adders) are unnecessary and are not in the interest of those customers who desire a level and predictable bill.
>
> A level pay tool already exists for Evergy customers.

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> The 5% Behavioral Usage adder, returned to the customer as an "efficiency incentive" if usage does not increase is not an efficiency incentive if the customer's prior electric use was inefficient. The customer changes no behavior to receive the "efficiency incentive." Such mischaracterization of the word "efficiency" sends customers an incorrect signal regarding efficient energy use.
>
> [. . .]
>
> Mr. Hledik's testimony states that the participant's bill would be "tailored" to each customer, however, according to Company responses to OPC Data Requests Nos. 8011 and 8012, the weather normalization of customer's usage would be based on Evergy's "class-level" weather normalization (not individual customer weather normalized usage) and the same percentage risk premium adder will be used when calculating the subscription pricing offer for all customers.
>
>> Data Request Response 8011 "Evergy will use the established [class-level 20 weather normalization] methodologies to weather normalize a customer's historical usage in order to calculate the customer's subscription pricing offer. Evergy's class-level weather normalization methodology accepts as input the temperatures (heating-degree days and cooling-degree days) from the actual historical data as well a normal temperatures (based on an average of 30 years of historical temperatures).
>>
>> Data Request Response 8012 "The same percentage risk premium adder is used when calculating the subscription pricing offer for all customers."

(Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 14 ln. 11 – pg. 16 ln. 2, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 14 ln. 11 – pg. 16 ln. 2, ER-2022-0130, EFIS Item No. 587 (internal citations omitted)). There are several issues in this list, but the OPC will only focus on one. That is the fact that Evergy's subscription pricing proposal is not necessary given the existence of the Company's average level payment plan option.

Evergy already has an average level payment plan option. Tr. vol. 10 pg. 55 lns. 1 – 3. The goal of this type of billing plan is the same as the purported goal of the subscription pricing plan. (Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 16 lns. 23 – 24, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 16 lns. 23 – 24, ER-2022-0130, EFIS Item No. 587). As the OPC's witness Ms. Lisa Kremer explained:

> Budget Billing or Average Pay provides predictability and consistency, and those goals are currently achievable by the customer and offered by the Company. Other than the probability of customers paying more under a Subscription Pricing program, any differences between the Subscription Pricing and the Company's Average Payment Plan are de-minimis. Opportunities to 'tweak' the company's Average Pay Plan may exist and the Office of the Public Counsel is open to and would welcome the opportunity to participate in such discussions.
>
> For example, my understanding is that Evergy's current Average Pay Plan includes a monthly adjustment to reflect actual usage and the amount due may vary slightly month to month. Ameren, by comparison, offers two budget billing options that permit the customer's energy bill to remain the same regardless of temperature and at the end of 12 months the customer may pay or receive a credit for any difference in the cost of their energy for the year or may rollover any unpaid balance divided across 12 months. Evergy could do the same.

Id. at pg. 16 ln. 24 – pg. 17 ln 11 (internal citations omitted). These sentiments mirror almost exactly those offered by Ms. Contessa King on behalf of the Staff during the evidentiary hearing:

> Q. Evergy currently offers a billing option 2 referred to as level pay, correct?
>
> A. Yes, their average level payment plan.

> Q. You would agree with me that the current average level payment plan is substantially similar -- let me walk that back. Were you here this morning when Mr. Hledik was testifying?
>
> A. Yes.
>
> Q. When he was asked a question from the Judge he was talking about broader perspectives, and one of the things he mentioned was the idea that customers might want a level or consistent amount of billing. You would agree with me that Evergy's current average level pay system allows customers to be billed a regular average amount every month, correct?
>
> A. That's correct.
>
> Q. Do you believe it would be possible to make changes to the existing average level pay system that could solve or bring that payment program closer or more similar to what Evergy is proposing here?
>
> A. Yes. I mean, the company is stating that one of the reasons they want to offer this program to their customers is because customers want predictability and they want choice. So they could look at their existing average payment plan and redesign it in a way in which customers would get that predictability and they can also design it in a way where there's choices that customers can make along the way within that 12-month period. For example, giving them the choice to true up maybe at six months or at the end of the 12-month period allowing them to roll over any remaining balance into the next 12 months. So they can achieve the predictability that they're touting as well as customer choice by simply redesigning an existing program, and OPC witness Ms. Lisa Kremer, she mentions that in her testimony as well.

Tr. Vol. 10 pg. pg. 555 ln. 1 – pg. 556 ln. 11. As should be readily apparent, there is absolutely no need for Evergy's subscription pricing program simply because the same underlying goals can already be achieved through its existing "average level payment plan." The Company's request for a superfluous second option should therefore be denied.

Counterproductive Nature of the Subscription Pricing Program

During the course of its investigation, it became apparent to the OPC that "the Company's qualitative and quantitative research was clearly slanted toward **_________** energy use to demonstrate customer interest in subscription pricing." (Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 16 lns. 15 – 17, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 16 lns. 15 – 17, ER-2022-0130, EFIS Item No. 587 (internal citations omitted)).This raises serious "concerns with the creation of long term, unrealistic customer expectations of energy consumed in this manner and the diametric shift away from the tenets of energy conservation, grid stabilization, resiliency, and that energy is a finite and costly resource." *Id.* at lns. 17 – 20. As OPC witness Ms. Kremer explained:

> The idea and promotion of **_________** energy is contrary to: (1) the Public Utility Regulatory Policies Act (PURPA) of 1978 passed as part of the National Energy Act, (2) grid resiliency highlighted after the recent experience of Storm Uri, (3) the energy efficiency interest promoted by the Missouri Energy Efficiency Investment Act (MEEIA), and (4) the tenets supporting time-of-use rate designs and load shifting.

Id. at pg. 17 ln. 24 – pg. 18 ln. 2. OPC witness Dr. Marke, meanwhile, explained the rationale behind the Company's desire to contradict all of the items identified by Ms. Kremer:

> rate design produces a feedback loop in which the price signals from rate design directly impact customer behavior, which in turn impacts future revenue requirement (or CAPEX build-out). . . . Stated differently, the Company has a financial incentive to promote "discount" rates that

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> encourage consumption because increase usage leads to increase build-out. Evergy could have just as correctly called this the "buffet style" rate plan as the intent is the same thing. Pay a flat fee and consume as much as you want. The "transparent" fees (behavioral, risk premium, program cost) mitigate some of the risk to the Company that they will under-collect but the long play is to get as many customers on this rate and consuming as much as possible to increase CAPEX build-out.

(Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 18 ln. 22 – pg. 19 ln. 9, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 18 ln. 22 – pg. 19 ln. 9, ER-2022-0130, EFIS Item No. 571). As with Ms. Kremer, Dr. Marke also noted how the subscription pricing proposal "runs contrary to Missouri's energy efficiency goals and arguably contrary to federal PURPA standards." *Id.* at pg.20 lns. 4 – 5. Taken together, these two witness explain quite clearly how the proposed subscription pricing program is inherently counterproductive to Evergy's energy efficiency goals and contrary to stated federal policy. The OPC will therefore conclude with one final quote from the testimony of Dr. Marke:

> It should also not be lost on the Commission that Evergy West is short on capacity and its customers are being asked to shoulder hundreds of millions of dollars in fuel costs from Storm Uri. System reliability and volatile price signals are becoming more and more the norm rather the exception. Buffet style pricing may have made sense in the 1950's where discount rates benefitted from economies of scale in production. Not so today. This pricing scheme will result in needless CAPEX build-out, perpetuate a reliance on existing fossil-fuel base load plants and contribute to volatile fuel prices by not sending the proper price signals.

Id. at pg. 20 lns. 6 – 12. Given these concerns, the Commission should deny Evergy's proposed subscription pricing program.

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Disallowance of consultant fees associated with Evergy's Subscription Pricing offering

Given the vast array of problems with Evergy's proposed subscription pricing program, including the inherent illegality of its design, no reasonable prudent utility would have proposed it. As such, there should be "a cost disallowance for the consulting fees associated with [Evergy witness] Mr. Hledik's testimony." *Id.* at pg. 21 ln. 5. "Ratepayers should not have to pay any costs associated with a rate design so out-of-line with Commission policy" *Id.* at lns. 6 – 7. Nor should ratepayers have to pay for testimony to support programs that cannot be legally implemented.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Initial Brief* and rule in the Office of the Public Counsel's favor on all matters addressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this fourteenth day of October, 2022.

/s/ John Clizer

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